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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 195.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET, PLAINTIFFS IN ERROR,

vs.

THOMAS H. MORRISON AND GARDNER S. HUTCHINSON, SURVIVORS, &c.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED OCTOBER 16, 1886.

1 United States Supreme Court.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET, Plaintiff in Error,
v.
THOMAS H. MORRISON and GARDNER S. HUTCHINSON, Survivors, &c., Defendants in Error.
} Citation.

The United States of America to Thomas H. Morrison and Gardner S. Hutchinson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the United States circuit court, third circuit, and for the district of New Jersey, wherein The Inhabitants of the Township of Bernards, in the County of Somerset, are plaintiffs in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ mentioned, should not be corrected, and why justice should not be done to the parties in that behalf.

1*a* Witness the Honorable John T. Nixon, one of the judges of the circuit court of the United States for the district of New Jersey.

Dated July 29th, 1886.

JNO. T. NIXON. *J.*

1*b* [Endorsed:] United States Supreme Court. The Inhabitants of the Township of Bernards, in the County of Somerset, pl'ffs in error, in debt, *v.* Thomas H. Morrison and Gardner S. Hutchinson, survivors, &c., def'd'ts in error. Citation. Service of the within citation is hereby acknowledged for the within-named def'ts in error, Sept. 14, 1886. Cortlandt & Wayne Parker, att'ys for def'd'ts in error.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court for the district of New Jersey, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States circuit court for the district of New Jersey, before you or some of you, between Thomas H. Morrison and Gardner S. Hutchinson, survivors, &c., of the State of New York, and The Inhabitants of the Township of Bernards, in the County of Somerset, in the State of New Jersey, manifest error hath happened, to the great damage of the said The Inhabitants of the Township of Bernards, in the County of Somerset, plaintiffs in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and

full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the said Supreme Court to be — and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court
2a may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, this twenty-ninth day of July, A. D. eighteen hundred and eighty-six.

[The Seal of the U. S. Circuit Court, Dist. of New Jersey.]

S. D. OLIPHANT,
Clerk of the Circuit Court of the United States.

ALVAH A. CLARK, *Att'ys.*

2b [Endorsed:] United States Supreme Court. The Inhabitants of the Township of Bernards, in the County of Somerset, pl'ffs in error, in debt, *v.* Thomas H. Morrison and Gardner S. Hutchinson, survivors, &c., def'd'ts in error. Writ of error. Alvah A. Clark, att'ys. Allowed July 29, 1886. Jno. T. Nixon, J.

3 Supreme Court of the United States.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET,
vs.
THOMAS H. MORRISON and GARDNER S. HUTCHINSON, Survivors, &c.

Know all men by these presents that we, John Compton, William Van Dorn, and William Childs, of Somerset county, New Jersey, are held and firmly bound unto Thomas H. Morrison and Gardner S. Hutchinson, survivors, &c., of the State of New York, in the sum of five hundred dollars, to be paid to the said Thomas H. Morrison and Gardner S. Hutchinson, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 5th day of June, 1886.

Whereas the above-named The Inhabitants of the Township of Bernards, in the County of Somerset, have prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in a suit between the said Thomas H. Morrison and Gardner S. Hutchinson, survivors, &c., and the said The Inhabitants of the Township of Bernards, in the County of Somerset, by the circuit court of the United States for the third circuit and district of New Jersey:

Now, therefore, the condition of this obligation is such that if the above-named The Inhabitants of the Township of Bernards,
4 in the County of Somerset, shall prosecute their said writ of error to effect and answer all costs if they shall fail to make good their plea, then this obligation to be void; otherwise to remain in full force and virtue.

JOHN COMPTON. [L. S.]
WILLIAM VAN DORN. [L. S.]
WILLIAM CHILDS. [L. S.]

Sealed and delivered in the presence of—
JAMES DOTEY.

UNITED STATES OF AMERICA, *District of New Jersey,* } *ss:*

John Compton, William Van Dorn, and William Childs, each of full age and each being duly sworn, severally depose and say each that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JOHN COMPTON.
WILLIAM VAN DORN.
WILLIAM CHILDS.

Sworn before me this 14th day of July, 1886.

JAMES DOTY,
Master in Chancery of New Jersey.

(Endorsed:) United States Supreme Court. The Inhabitants of the Township of Bernards, in the County of Somerset, *vs.* Thomas H. Morrison & Gardner S. Hutchinson, survivors, &c. On writ of error. Bond for costs. Approved July 29, 1886. Jno. T. Nixon, J. Clark & Reed, att'ys pl't'ff in error.

5 United States Circuit Court, District of New Jersey.

THOMAS H. MORRISON and GARDINER S. Hutchinson, Survivors of Thomas A. Morrison and Others,
vs.
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET. } In Debt. Judgment.

As yet of the thirteenth day of June, A. D. eighteen hundred and seventy-four.

JOHN T. NIXON, *Judge.*

Witness:
S. D. OLIPHANT, *Clerk.*

DISTRICT OF NEW JERSEY, *ss:*

The Inhabitants of the Township of Bernards, in the County of Somerset and State of New Jersey, a municipal corporation and body

politic of the State of New Jersey, the defendants herein, were summoned to answer unto Thomas A. Morrison, Thomas H. Morrison, and Gardiner S. Hutchinson, citizens of the State of New York, the plaintiffs herein, of a plea that they render unto them the sum of ten thousand dollars which to them they owe and from them unjustly detain; and thereupon the said plaintiffs, by Parker and Keasbey, their attorneys, complain for that whereas heretofore, to wit, on the seventeenth day of December, eighteen hundred and sixty-eight, there was filed in the office of the clerk of the county of Somerset, in said
6 State of New Jersey, in which county the said township of Bernards is situate, a certain paper writing purporting to be signed by divers tax-payers and land-owners in said township, the purport and effect of which paper writing was that the persons signing the same did consent that the commissioners appointed for said township to carry into effect the purposes and provisions of a certain act of the Legislature of said State of New Jersey, entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April the ninth, eighteen hundred and sixty-eight, might, under the provisions of said act, borrow on the faith and credit of said township and execute bonds for the sum of one hundred and thirty thousand dollars (such sum not exceeding ten percentum of the valuation of the real estate and landed property of said township ascertained by the assessment-rolls thereof for the year eighteen hundred and sixty-seven), which money should be invested, in compliance with the provisions of said act, in the stock of the said railroad company, and that the said commissioners might exercise full and complete power for said township to carry into effect the purposes and provisions of said act, to which paper writing was annexed the several affidavits of John H. Anderson, Oliver R. Stelle, and John Guerin, therein described as and severally asserting themselves to be and in fact being commissioners for said township to carry into effect the provisions and purposes of said act of the Legislature, made before one James Thompson, alleging himself to be and in fact
7 being one of the justices of the peace of said county, to the purport and effect that the said several signatures of said tax-payers and land-owners to said paper writing were genuine signatures of the persons purporting to sign the same, and an affidavit of one William A. McMurtry, therein described as and alleging himself to be and in fact being the assessor of said township of Bernards, made before said James H. Thompson, justice of the peace, as aforesaid, on the nineteenth day of September, eighteen hundred and sixty-eight, to the purport and effect that he was at that time the assessor of said township and in possession of and discharge of the duties of the office of such assessor; that he, the said affiant, had read the said paper writing purporting to be a consent of tax-payers as aforesaid, and had read and inspected the names thereto signed, and that he had also carefully inspected the assessment-roll of said township for the year eighteen hundred and sixty-seven, and they [that] he knew and was acquainted with the tax-payers

of said township, and that the persons whose names were so signed to said paper writing constituted a majority of the tax-payers of said township and represented a majority of the real property of such township in value, and also that the said persons whose names were signed to said paper writing constituted a majority of the tax-payers of such township appearing upon the assessment-roll of such township for the year eighteen hundred and sixty-seven, and that they, the said last-mentioned persons, represented a majority of the landed property of such township appearing on the said assessment-roll of said township for the year eighteen hundred and sixty-seven; and afterwards, to wit, on the twenty-third day of December,
8 eighteen hundred and sixty-eight, a paper writing purporting to be a copy of the first-mentioned paper writing and of the said several affidavits thereto annexed, and certified by the clerk of the said county of Somerset, under his hand and seal of said county, to be such copy, was duly filed in the office of clerk of said township of Bernards.

First. And whereas also the said defendants, on the said 1st day of January, 1869, in the county of Somerset aforesaid, by and under the hands and seals of the said John H. Anderson, John Guerin, and Oliver R. Stelle, commissioners of said township, duly appointed and sworn as directed by the provisions of the said act of the Legislature of New Jersey, entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railway Company," approved April 9th, 1868, did then and there make their certain bond, bearing date the same day and year last aforesaid, numbering fifty-one, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to the bearer of said bond one thousand dollars, which sum they did thereby promise to pay the holder thereof, at the American Exchange National Bank, in the city of New York, twenty-one years after the date thereof aforesaid, and also the city of New York, twenty-one years after the date thereof aforesaid, and also interest thereon at the rate of seven per cent. per annum, payable semi-annually, on the 1st days of July and January in each year, until the aforesaid principal sum should be paid, on presentation of the interest coupons to said bond annexed,
9 at the said bank; and it was by said bond then and there declared that the same was one of a series of like tenor, amounting in the whole to the sum of one hundred and twenty-seven thousand dollars, issued on the faith and credit of said township in pursuance of said act entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railway Company," approved April 9th, 1868, and the said bond was afterward, and before the same was issued, to wit, on the said first day of January, eighteen hundred and sixty-nine, duly registered in the office of the clerk of the said county of Somerset by William Ross, Junior, then clerk of said county, and the words "registered in the county clerk's office" printed across the face of the same, and the name

"William Ross, Jr., county clerk," written by said clerk under said last-mentioned printed words on the face of the same; and there was then and there annexed and attached to said last-mentioned bond six certain interest coupons, by one of which it was stated and expressed that said defendants would pay the bearer thereof, at the American Exchange National Bank, in the city of New York, on the first day of July, 1871, thirty-five dollars for six months' interest on said bond, and by another of which said last-mentioned interest coupons it was stated and expressed that the said defendants would pay to the bearer thereof, at the same bank above mentioned, on the 1st day of January, 1872, the like sum of thirty-five dollars for six months' interest on said bond, and by another of which said last-mentioned interest coupons it was stated and expressed
10 that the said defendants would pay to the bearer thereof, at the same bank above mentioned, on the 1st day of July, 1872, the like sum of thirty-five dollars for six months' interest on said bond, and by another of which said last-mentioned interest coupons it was stated and expressed that the said defendants would pay to the bearer thereof, at the same bank above mentioned, on the 1st day of January, 1873, the like sum of thirty-five dollars for six months' interest on said bond, and by another of which said last-mentioned interest coupons it was stated and expressed that the said defendants would pay to the bearer thereof, at the same bank above mentioned, on the 1st day of July, 1873, the like sum of thirty-five dollars for six months' interest on said bond, and by another of which said last-mentioned interest coupons it was stated and expressed that the said defendants would pay to the bearer thereof, at the same bank above mentioned, on the 1st day of January, 1874, the like sum of thirty-five dollars for six months' interest on said bond.

And the plaintiffs in fact say that before the 1st day of May last they became, for valuable consideration by them paid, by purchase of the same in public market, and then and there were holders of said last-mentioned bond and bearers thereof, and of the said last-mentioned interest coupons, and that they still continue to be such holders and bearers thereof.

And the plaintiffs further say that heretofore, to wit, on the 1st day of July, 1871, in the city of New York, said interest coupon
11 first in this count above mentioned was duly presented at said American Exchange National Bank, in the city of New York, and payment of said sum of thirty-five dollars therein mentioned was then and there duly demanded, but that the same was then and there not paid, but was refused to be paid; of all which said defendants then and there had notice.

And afterwards, to wit, on the 1st day of January, 1872, in said city of New York, said interest coupon secondly in this count above mentioned was duly presented at said bank therein mentioned and payment of said sum of thirty-five dollars therein named was duly demanded, but that the same was then and there not paid and was and still is refused to be paid; of all which the defendants then and there had due notice.

And afterwards, to wit, on the 1st day of July, 1872, in said city of New York, said interest coupon thirdly in this count above mentioned was duly presented at said bank therein mentioned and payment of said sum of thirty-five dollars therein named was duly demanded, but that the same was then and there not paid and was and still is refused to be paid; of all which the defendants then and there had due notice.

And afterwards, to wit, on the 1st day of January, 1873, in said city of New York, said interest coupon fourthly in this count above mentioned was duly presented at said bank therein mentioned and payment of said sum of thirty-five dollars therein named was duly demanded, but that the same was then and there not paid and was and still is refused to be paid; of all which the defendants then and there had due notice.

12 And afterwards, to wit, on the 1st day of July, 1873, in said city of New York, said interest coupon fifthly in this count above mentioned was duly presented at said bank therein mentioned and payment of said sum of thirty-five dollars therein named was duly demanded, but that the same was then and there not paid and was and still is refused to be paid; of all which the defendants then and there had due notice.

And afterwards, to wit, on the 1st day of January, 1874, in said city of New York, said interest coupon sixthly in this count above mentioned was duly presented at said bank therein mentioned and payment of said sum of thirty-five dollars therein named was duly demanded, but that the same was then and there not paid and was and still is refused to be paid; of all which the defendants then and there had due notice.

By means whereof an action hath accrued to the plaintiff to have and recover from the defendants the sum of two hundred and ten dollars, being the amount of the said six interest coupons to the said bond in this count mentioned annexed, other parcel of the sum above demanded.

Second. And whereas also the said defendants, on the said 1st day of January, 1869, in the county of Somerset aforesaid, by and under the hands and seals of the said John H. Anderson, John Guerin, and Oliver R. Stelle, commissioners of said township, duly appointed and sworn as directed by the provisions of the said act of the Legislature of New Jersey entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue

13 bonds and take stock in the Passaic Valley and Peapack Railway Company," approved April 9th, 1868, did then and there make their certain other bond, bearing date the same day and year last aforesaid, numbering fifty-two, which last-mentioned bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to the bearer of said last-mentioned bond one thousand dollars, which sum they did thereby promise to pay the holder thereof, at the American Exchange National Bank, in the city of New York, twenty-one years after the date thereof aforesaid, and also interest thereon, at the rate of seven per cent. per annum, payable semi-

annually, on the 1st days of July and January in each year, until the aforesaid principal sum should be paid, on presentation of the interest coupons to said last-mentioned bond annexed, at the said bank; and it was by said last-mentioned bond then and there declared that the same was one of a series of like tenor, amounting in the whole to the sum of one hundred and twenty-seven thousand dollars, issued on the faith and credit of said township, in pursuance of said act entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railway Company," approved April 9th, 1868; and the said last-mentioned bond was afterward, and before the same was issued, to wit, on the said first day of January, eighteen hundred and sixty-nine, duly registered in the office of the clerk of the said county of Somerset by William Ross,
14 Junior, then clerk of said county, and the words "registered in the county clerk's office" printed across the face of the same, and the name "William Ross, Jr., county clerk," written by said clerk under said last-mentioned printed words on the face of the same; and there was then and there annexed and attached to said last-mentioned bond six certain interest coupons, by one of which it was stated and expressed that said defendants would pay the bearer thereof, at the American Exchange National Bank, in the city of New York, on the first day of July, 1871, thirty-five dollars for six months' interest on said bond and by another, of which said last-mentioned interest coupons it was stated and expressed that the said defendants would pay to the bearer thereof, at the same bank above mentioned, on the 1st day of January, 1872, the like sum of thirty-five dollars for six months' interest on said bond; and by another of which said last-mentioned interest coupons it was stated and expressed that the said defendants would pay to the bearer thereof, at the same bank above mentioned, on the 1st day of July, 1872, the like sum of thirty-five dollars for six months' interest on said bond; and by another of which said last-mentioned interest coupons it was stated and expressed that the said defendants would pay to the bearer thereof, at the same bank above mentioned, on the 1st day of January, 1873, the like sum of thirty-five dollars for six months' interest on said bond; and by another of which said last-mentioned interest coupons it was stated and expressed that the said defendants would pay to the bearer thereof, at the same bank above mentioned, on the 1st day of July, 1873,
15 the like sum of thirty-five dollars for six months' interest on said bond; and by another of which said last-mentioned interest coupons it was stated and expressed that the said defendants would pay to the bearer thereof, at the same bank above mentioned, on the 1st day of January, 1874, the like sum of thirty-five dollars for six months' interest on said bond.

And the plaintiffs in fact say that before the 1st day of May last they became, for valuable consideration by them paid, by purchase of the same in public market, and then and there were holders of said last-mentioned bond and bearers thereof and of the said last-

mentioned interest coupons, and that they still continue to be such holders and bearers thereof.

And the plaintiffs further say that heretofore, to wit, on the 1st day of July, 1871, in the city of New York, said interest coupon first in this count above mentioned was duly presented at said American Exchange National Bank, in the city of New York, and payment of said sum of thirty-five dollars therein mentioned was then and there duly demanded, but that the same was then and there not paid, but was refused to be paid; of all which said defendants then and there had notice.

And afterwards, to wit, on the 1st day of January, 1872, in said city of New York, said interest coupon secondly in this count above mentioned was duly presented at said bank therein mentioned, and payment of said sum of thirty-five dollars therein named was duly demanded, but that the same was then and there not paid
16 and was and still is refused to be paid; of all which the defendants then and there had due notice.

And afterwards, to wit, on the 1st day of July, 1872, in said city of New York, said interest coupon thirdly in this count above mentioned was duly presented at said bank therein mentioned, and payment of said sum of thirty-five dollars therein named was duly demanded, but that the same was then and there not paid and was and still is refused to be paid; of all which the defendants then and there had due notice.

And afterwards, to wit, on the 1st day of January, 1873, in said city of New York, said interest coupon fourthly in this count above mentioned was duly presented at said bank therein mentioned, and payment of said sum of thirty-five dollars therein named was duly demanded, but that the same was then and there not paid and was and still is refused to be paid; of all which the defendants then and there had due notice.

And afterwards, to wit, on the 1st day of July, 1873, in said city of New York, said interest coupon fifthly in this count above mentioned was duly presented at said bank therein mentioned, and payment of said sum of thirty-five dollars therein named was duly demanded, but that the same was then and there not paid and was and still is refused to be paid; of all which the defendants then and there had due notice.

And afterwards, to wit, on the 1st day of January, 1874, in said city of New York, said interest coupon sixthly in this
17–318 count above mentioned was duly presented at said bank therein mentioned, and payment of said sum of thirty-five dollars therein named was duly demanded, but that the same was then and there not paid and was and still is refused to be paid; of all which the defendants then and there had due notice.

By means whereof an action hath accrued to the plaintiffs to have and recover from the defendants the sum of two hundred and ten dollars, being the amount of the said six interest coupons to the said bond in this count mentioned annexed, other parcel of the sum above demanded.

(Here follow counts third to sixty-ninth, inclusive, which are omitted in printing, per stipulation. See page 340.)

* * * * * * *

319 And whereas the said defendants also afterward, to wit, on the fifth day of May, anno Domini eighteen hundred and seventy-four, at Somerville, in the county of Somerset aforesaid, were indebted to the said plaintiffs in the further sum of forty-four hundred and seventy-three dollars and fifty cents of like lawful money for so much money before that time and then due and payable from the said defendants to the said plaintiffs for interest upon and for the forbearance of divers large sums of money before then due and owing from the said defendants to the said plaintiffs, and by the said plaintiffs forborne to the said defendants for divers long spaces of time before then elapsed at the special instance and request of the said defendants, and to be paid by the said defendants to the said plaintiffs when they, the said defendants, should be thereunto afterwards requested, whereby and by reason of the said last-mentioned sum of money being and remaining wholly unpaid an action hath accrued to the said plaintiffs to demand and have of
320 and from the said defendants the said further sum of forty-four hundred and seventy-three dollars and fifty cents, further part, parcel, and residue of the sum of ten thousand dollars above demanded.

Yet the said defendants, although often requested so to do, have not paid the said sum of ten thousand dollars above demanded or any part thereof to the said plaintiffs, but they to do this have hitherto wholly refused, and still do refuse, to the damage of the said plaintiffs of two thousand dollars, and therefore they bring their suit, &c.

321 And the said defendants, by Jacob Vanatta, their attorney, come and defend the wrong and injury when, &c., and say that no one of the said several supposed writings obligatory in the said declaration mentioned is the deed of the said defendants, and of this they put themselves upon the country.

And the said defendants, for a further plea in this behalf, by leave of the court for this purpose, according to the form of the statute in such case made and provided, say that the said plaintiffs ought not to have or maintain their aforesaid action thereof against them because they say that the said John H. Anderson, John Guerin, and Oliver H. Steele were not nor was either of them, at any time prior to the commencement of this suit, commissioners of the said township of Bernards duly appointed and sworn as directed by the provisions of the said act of the Legislature of New Jersey, entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868, in manner and form as the said plaintiffs have above in their declaration in that behalf alleged, and this the said defendants are ready to verify; wherefore they pray judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against them, &c.

And for a further plea in this behalf by leave of the court here for

that purpose first had and obtained, according to the form of the statute in such case made and provided, the said defendants
322 say that the said plaintiffs ought not to have or maintain their aforesaid action thereof against them because they say that before the issuing of the said several supposed bonds or writings obligatory in the said declaration mentioned by the said commissioners in the said declaration mentioned the written consent had not been obtained of the majority of the tax-payers of the said township of Bernards or their legal representatives, appearing upon the last assessment-roll of the said township of Bernards, and also representing a majority of the landed property of the said township of Bernards (including lands owned by non-residents appearing upon the last assessment-roll of said township), stating the amount of money authorized to be raised in said township, and that the same be invested in the stock of the Passaic Valley and Peapack Railroad Company according to the provisions, true intent, and meaning of the said act of the Legislature of the State of New Jersey in the said declaration mentioned, entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868.

And this the said defendants are ready to verify; wherefore they pray judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against them, &c.

And for a further plea in this behalf, by the like leave, the said defendants say that the said plaintiffs ought not to have or
323 maintain their aforesaid action thereof against them because they say that while true it is that heretofore, to wit, on the seventeenth day of December, eighteen hundred and sixty-eight, there was filed in the office of the clerk of the county of Somerset, in said State of New Jersey, in which county said township of Bernards is situate, a certain paper writing purporting to be signed by divers tax-payers and land-owners in said township, which paper writing was of the purport and effect in that behalf stated in the said declaration, and while it is true that to said paper writing there was annexed the several affidavits of John H. Anderson, Oliver H. Stelle, and John Guerin, therein described as and asserting themselves commissioners for said township to carry into effect the provisions and purposes of said act of the Legislature, which several affidavits were of the purport and effect in that behalf stated in the said declaration, and also an affidavit of one William O. McMurtry, therein described and alleging himself to be the assessor of said township of Bernards, made before said James H. Thompson, justice of the peace, on the nineteenth day of September, eighteen hundred and sixty-eight, which last-mentioned affidavit was of the purport and effect in that behalf stated in the said declaration, yet, protesting that said paper writing and the said several affidavits, in this plea referred to, were not filed in the office of the clerk of the county of Somerset by the power or authority or at the request of the said defendants nor by any lawful power or authority whatsoever, the said de-
324 fendants say that the said affidavit of the said William A.

McMurtry was not, when made and filed as stated in said declaration, true in fact, but was erroneous and untrue in the statements that the persons whose names were so signed to said paper writing constituted a majority of the tax-payers of said township and represented a majority of the real property of such township in value, and also that the persons whose names were signed to said paper writing constituted a majority of the tax-payers of such township appearing upon the assessment-roll of such township for the year eighteen hundred and sixty-seven, and that they, the said last-mentioned persons, represented a majority of the landed property of such township appearing on the said assessment-roll of said township for the year eighteen hundred and sixty-seven, while in truth and in fact the persons, whose names were so signed to said paper writing did not constitute a majority of the tax-payers of said township and did not represent a majority of the real property of said township in value, nor did the said persons whose names were signed to said paper writing constitute a majority of the tax-payers of said township appearing upon the assessment-roll of said township for the year eighteen hundred and sixty-seven, nor did they, the said last-mentioned persons, represent a majority of the landed property of said township appearing on the said assessment-roll of said township for the year eighteen hundred and sixty-seven, and this the said defendants are ready to verify; wherefore the said defendants pray judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against them, &c.

325 And for a further plea in this behalf, by like leave, &c., the said defendants say that the said plaintiffs ought not to have or maintain their aforesaid action thereof against them because they say that the said alleged commissioners in the said declaration named, before the issuing of the said supposed bonds or writings obligatory in the said declaration mentioned, or at any other time, nor before or at the time of the disposing of the said supposed bonds or writings obligatory in the said declaration mentioned, or of any of them, nor at any other time, did not borrow, on the faith and credit of the said township of Bernards, any sums or sum of money whatsoever, nor were the said supposed bonds or writings obligatory, or any of them, executed, issued, or delivered or disposed of by the said commissioners or a majority or any of them for money loaned to or borrowed by the said defendants, but were executed, issued, delivered, and disposed of by the said alleged commissioners without any lawful consideration whatsoever, and this the said defendants are ready to verify; wherefore they pray judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against them, &c.

And for a further plea in this behalf, by like leave, &c., the said defendants say that the said plaintiffs ought not to have or maintain their aforesaid action thereof against them because they say that the said several supposed bonds or writings obligatory in the said declaration mentioned were, and every one of them was, by the

326 said commissioners in the said declaration named executed, issued, and disposed of without the conditions precedent to issu-

ing said bonds, required by the act of the Legislature hereinafter mentioned, having been done or performed, and without lawful power or authority to issue said alleged bonds or writings obligatory, and contrary to and in violation of the said act of the Legislature of the State of New Jersey, entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and stocks in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868, whereof the said plaintiffs, at and before the time when they became the holders or bearers of said supposed bonds or writings obligatory, had due and sufficient notice, to wit, at Trenton aforesaid, and this the said defendants are ready to verify; wherefore they pray judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against them, &c.

1. And the said plaintiff, as to the said plea by the defendants first above pleaded, whereof they have put themselves upon the country, doth the like.

2. And the said plaintiffs, as to the said plea by the defendants secondly above pleaded, say that by reason of anything in said plea alleged they ought not to be barred from having their aforesaid action against the defendants, because they say that the said John H. Anderson, John Guerin, and Oliver R. Stelle, at the several times when, &c., were and each of them were commissioners of said township, and were and each of them was duly commissioned and sworn in accordance with the provisions of said act of the
327 Legislature in manner and form as the plaintiffs have in that behalf in their said declaration alleged, and this they pray may be inquired of by the country, and the defendants do the like.

3. And as to the said plea by the said defendants thirdly above pleaded the said plaintiffs say that by reason of anything by the defendants in that plea alleged they ought not to be barred from having and maintaining their action thereof against them, because they say that before the issuing of the said several bonds in the plaintiffs' declaration mentioned—to wit, on the first day of January, eighteen hundred and sixty-nine—the written consent to the issuing of the same had been obtained of a majority of the taxpayers of said township of Bernards appearing upon the last preceding assessment-roll of said township, and such majority of taxpayers did represent a majority of the landed property of said township of Bernards, including the lands owned by non-residents appearing upon the last assessment-roll of said township, and such written consent did state the amount of money authorized to be raised in said township, and that the same should be invested in the stock of the Passaic Valley and Peapack Railroad Company, in all respects according to the provisions, true intent, and meaning of the said act of the Legislature of the State of New Jersey, and this the plaintiffs pray may be inquired of by the country, and the defendants do the like.

4. And as to the said plea by the said defendants fourthly above pleaded the said plaintiffs say that by reason of anything in that plea alleged the said plaintiffs ought not to be barred from
328 having and maintaining their said action against the defend-

ants because they say that said affidavit of the said William A. McMurtry in the said fourth plea mentioned was, when so made and filed as aforesaid, in all things true in fact and was not erroneous in the matters and things in said plea in that behalf alleged or in any other matter whatever, and this the plaintiffs pray may be inquired of by the country, and the defendants do the like.

5. And for a further replication to the said plea of the said defendants by them fourthly above pleaded, by leave of the court for the purpose first had and obtained, the said plaintiffs say that by reason of anything in that plea alleged the said plaintiffs ought not to be barred from having and maintaining their aforesaid action thereof against the defendants because they say that after the making and filing of the said written consent and the several affidavits thereto annexed, as in the plaintiffs' declaration and said fourth plea is alleged, and before the issuing or negotiating of any of said bonds or writings obligatory in the plaintiffs' declaration mentioned—to wit, on the first day of September, eighteen hundred and sixty-nine—there was filed in the office of the said clerk of the said county of Somerset a certain other paper writing of like tenor, purport, and effect with the said paper writing mentioned in said declaration and therein alleged to have been filed in said office on the seventeenth day of December, eighteen hundred and sixty-eight, and said paper writing so filed in said clerk's office on the first day of September, eighteen hundred and sixty-nine, purported to
329 be signed by divers tax-payers and land-owners in said township of Bernards other than and in addition to the said tax-payers and land-owners who had signed the said paper writing so mentioned in said declaration and in and by said paper writing so filed on the first day of September, eighteen hundred and sixty-nine. The persons so signing the same did consent in all things and in all respects, as did the said persons so signing the said paper writing so set out in said declaration, except that the amount of bonds thereby authorized to be issued was one hundred and twenty-seven thousand dollars, and annexed to the same were the several affidavits of John H. Anderson, Oliver R. Stelle, John Guerin, therein described as and severally asserting themselves to be, and in fact being, commissioners as aforesaid, made before said James H. Thompson, still being one of the justices of the peace of said county of Somerset, of the purport and effect that the said several signatures of said tax-payers and land-owners to said last-mentioned paper writing were the genuine signatures of the persons purporting to sign the same, and an affidavit of the said William A. McMurtry, therein alleging himself to be, and in fact being, the assessor of said township of Bernards, made before said James H. Thompson, justice of the peace as aforesaid, made on the thirtieth day of August, eighteen hundred and sixty-nine, to the purport and effect that he was at that time the assessor of the said township of Bernards and in the possession and discharge of the duties of the office of such assessor; that he had read the said last-mentioned paper writ-
330 ing purporting to be a like consent of said tax-payers, and also the said other paper writing purporting to be a like

consent, so filed in the office of said clerk on the seventeenth day of December, eighteen hundred and sixty-eight, and had read and inspected the names thereto signed, and also the proof of the signatures thereto by the said commissioners thereto annexed, and also that he had carefully inspected the assessment-roll of said township for the year eighteen hundred and sixty-seven, and that he knew and was acquainted with the tax-payers of said township, and that the persons signing the said paper writing purporting to be such consent, and to which his said present affidavit was annexed, together with those who had signed the said paper writing so filed in the office of said clerk on the seventeenth day of December, eighteen hundred and sixty-eight, constituted and was [were] a majority of the tax-payers of said township and represented a majority of the real property of said township in value, and also that the said persons so signing the said several paper writings purporting to be such consents constituted and were a majority of the tax-payers of such township appearing upon the assessment-roll of such township for the year eighteen hundred and sixty-seven, and that they did represent a majority of the landed property of said township in value appearing on the assessment-roll of said township for the year eighteen hundred and sixty-seven, and that afterwards, to wit, on the ninth day of September, eighteen hundred and sixty-nine, a paper writing purporting to be a copy of said last-mentioned paper writing and of the several affidavits thereto annexed,
331 and certified by said clerk of said county of Somerset, under his hand and the seal of said county, to be such copy, was duly filed in the office of the clerk of said township of Bernards; and the said plaintiffs further say that the said several persons so purporting to sign the said several paper writings in said declaration and this replication mentioned and set forth, so purporting to be such consents as aforesaid, were in fact tax-payers of said township, and their several signatures thereto were genuine, and the said persons so signing said written consents did in fact, during each of the years eighteen hundred and sixty-seven, eighteen hundred and sixty-eight, and eighteen hundred and sixty-nine, constitute, and during each of those years were a majority of, the tax-payers of said township, and represented a majority in value of the real property of said township, and that said persons whose names were so signed as aforesaid constituted a majority of the tax-payers of said township appearing on the several assessment-rolls of said township for each of the said last-mentioned three years, and also represented a majority in value of the landed property of said township appearing on each of the said last-mentioned assessment-rolls, and this the said plaintiffs are ready to verify; wherefore they pray judgment and their debt aforesaid, together with the damages by them sustained on occasion of the detention thereof, to be adjudged to him, &c.

And as to the said plea of the said defendants by them
332 fifthly above pleaded the said plaintiffs say they ought not by reason of anything in said plea alleged — be barred from having and maintaining their aforesaid action against the said defendants because they say that the said commissioners in the said

declaration mentioned did, at and before the issuing of said bonds or writings obligatory, to wit, on the first day of December, eighteen hundred and sixty-nine, borrow, on the faith and credit of said township, for the use thereof, under said act of the Legislature, a large sum of money, to wit, the sum of one hundred and twenty-seven thousand dollars, and the said bonds or writings obligatory were so issued by them in part payment of said sum of money so borrowed by them, and so for a good and valuable consideration, and this the said plaintiffs pray may be inquired of by the country, and the defendants do the like.

And as to the said plea by the said defendants sixthly above pleaded the said plaintiffs say that by reason of anything by the said defendants in that plea alleged the said plaintiffs ought not to be barred from having and maintaining their said action against the defendants, because they say that before the issuing of any of said several bonds or writings obligatory in said declaration mentioned to wit, on the first day of December, eighteen hundred and sixty-nine, all things and conditions precedent by said act of the Legislature required to be done, performed, and fulfilled before the issuing of the same were so done, performed, and fulfilled, without this, that the said several bonds or writings obligatory or any
333 of them were issued and disposed of by said commissioners without the conditions precedent to issuing the same required by said act having been done or performed and without lawful power or authority to issue the same, and contrary to and in violation of the said act of the Legislature, and this the plaintiffs pray may be enquired of by the country, and the defendants do the like.

And for a further replication to the said plea by the said defendants thirdly, fourthly, fifthly, and sixthly above pleaded the said plaintiffs say that, by reason of anything by the said defendants in said several pleas or either of them alleged, the said plaintiffs ought not to be barred from having and maintaining their aforesaid action against the defendants, because they say that after the issuing of said several bonds or writings obligatory by said commissioners, to wit, on the first day of January, eighteen hundred and seventy, the said plaintiffs purchased the said several bonds or writings obligatory in open market of divers individuals other than the said commissioners, and which individuals had severally lawful possession of the same, and paid for the same to said individuals so in possession of the same severally a large sum of money, to wit, a sum of money for each of said bonds or writings obligatory equal to the amount therein expressed and promised to be paid by said defendants; and at the time of such purchase and payment said plaintiffs had no knowledge, notice, information, or suspicion of any of the matters or things by said defendants in said third, fourth, fifth,
334 and sixth pleas severally alleged and pleaded as matters of defence to this action; and at the said time of said purchase the said plaintiffs supposed and verily believed that the said bonds or writings obligatory had been made and issued in all respects in accordance with the terms of said act of the Legislature and the law

of the land, and that all matters, things, and conditions precedent to their being so issued, required and prescribed by said act of the Legislature, had been in all things fulfilled, done, and performed; and this the plaintiffs are ready to verify. Wherefore they pray judgment and their debt aforesaid, together with their charges, by them sustained on occasion of the detention thereof, to be adjudged to them.

And the said defendants, as to the second replication of the said plaintiffs to the fourth plea of the said defendants, say that the said plaintiffs, by reason of anything by them in that replication alleged, ought not to have or maintain their aforesaid action thereof against the defendants, because they say that while true it is that heretofore, to wit, on the 1st day of September, A. D. 1869, there was filed in the office of the said clerk of the said county of Somerset a certain other paper writing of like tenor, purport, and effect with the paper writing mentioned in the declaration and filed in the said clerk's office of said Somerset county on the 17th day of December, A. D. 1868, purporting to be signed by divers tax-payers and land-owners in said township, and while it is true that the persons signing said paper writing did consent in all things and in all respects, as did the said persons so signing the paper
335 writing set out in the declaration, except that the amount of bonds thereby authorized to be issued was $127,000, and while it is true that to said paper writing there was [were] annexed the several affidavits of John H. Anderson, Oliver R. Steele, and John Guerin, therein described as and severally asserting themselves to be commissioners as aforesaid, which several affidavits were of the purport and effect in that behalf stated in the said second replication to said fourth plea, and also the affidavit of one William A. McMurtry, therein described and alleging himself to be the assessor of said township of Bernards, made before said James H. Thompson, justice of the peace, on the 30th day of August, A. D. 1869, which last affidavit was of the purport and effect in that behalf stated in said second replication to said fourth plea, yet, protesting that the said paper writing and the said several affidavits to said second replication to said fourth plea referred to were not filed in the office of the clerk of Somerset county by the power or authority or at the request of the defendants, nor by any lawful power or authority whatsoever, the said defendants say that the said affidavit of the said William A. McMurtry was not, when made and filed as stated in said second replication to the said fourth plea, true in fact, but was erroneous and untrue in the statement that the persons whose names were signed to said paper writing set up in said second replication to said fourth plea, together — the persons whose names were signed to the paper writing set up in said declaration, constituted a majority of the tax-payers of said township and represented
336 a majority of the real property of such township — value, and also that the persons whose names were signed to said several paper writings together constituted a majority of the tax-payers of such township appearing upon the assessment-roll of such township for the — 1867, and that they, the last-named persons,

represented a majority in value of the landed property of such township appearing on the said assessment-roll of said township for the year 1867, while in truth and in fact the names of the persons whose names were signed to said several paper writings did not together constitute a majority of the tax-payers of said township, and *did not together constitute a majority of the tax-payers of said township and* did not together represent a majority of the real property of said township in real value, nor did said persons constitute a majority of the tax-payers of said township appearing upon the assessment-roll of said township for the year 1867, nor did such persons represent a majority of the landed property in value appearing upon the said assessment-roll of said township for the year 1867, nor was such paper writing, so, as aforesaid, filed in the clerk's office of said county of Somerset the first day of September, 1869, signed by divers tax-payers and land-owners in said township of Bernards other than cited in addition to the said tax-payers and land-owners who had signed the said paper writing set up in the declaration, but in truth and fact many of such tax-payers and land-owners whose names are annexed to such paper writings set up in said second replication to said fourth plea also appear to said paper writing set up in said declaration; and of this the defendants
337 put themselves upon the country.

And the said defendants say that the replication of the plaintiffs lastly pleaded, and being a second replication to the third, fourth, fifth, and sixth pleas and a third replication to the fourth plea of the defendants above pleaded, and the matters therein contained in manner and form as the same are above pleaded — set forth, are not sufficient in law for the said plaintiffs to have or maintain their aforesaid — thereof against the said defendants, and that they, the said defendants, are not bound by law to answer the same, and this the defendants are ready to verify; wherefore, by reason of the insufficiencies of said replication in this behalf, the said defendants pray judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against them, &c.

And the said plaintiffs say that the replication of the plaintiffs lastly pleaded, and being a second replication to the third, fourth, fifth, and sixth pleas and a third replication to the fourth plea of the defendants above pleaded, and the matters therein contained in manner and form as the same are above pleaded and set forth, are sufficient in law to have and maintain their aforesaid action thereof against the said defendants, and this the said plaintiffs are ready to verify and prove as the court here shall direct and award; wherefore, inasmuch as the said defendants have not answered the said replication nor hitherto in any manner denied the same, the said plaintiffs pray judgment and their debt aforesaid, together with their dam-
338 ages by them sustained on occasion of the detention thereof, to be adjudged to them, &c.

A demurrer having been filed by said defendants to the replication of the plaintiffs by them lastly pleaded, being a second replication to the third, fifth, and sixth pleas and a third replication to the fourth plea of said defendants, and the plaintiffs having

thereupon joined in demurrer, and the matter being now argued before the court by Alvah A. Clark and James S. English, on the part of the defendants, and Cortlandt Parker, on the part of the plaintiffs, and duly considered by the court, it is now, on this thirty-first day of March, one thousand eight hundred and eighty-five, ordered and adjudged by the court that the said demurrer be overruled with costs.

Judgment signed this thirty-first day of March, A. D. one thousand eight hundred and eighty-five.

JNO. T. NIXON, *J.*

339 UNITED STATES OF AMERICA, *District of New Jersey*, } *ss:*

I, S. D. Oliphant, clerk of the circuit court of the United States for the District of New Jersey, do hereby certify that the foregoing is a true transcript of the judgment in the cause wherein Thomas H. Morrison and Gardner S. Hutchinson, survivors, &c., are plaintiffs and The Inhabitants of the Township of Bernards, in the County of Somerset, are defendants, as the same remains on file and of record in my office, at Trenton, in said district.

The Seal of the U. S. Circuit Court, Dist. of New Jersey.

In testimony whereof I hereto set my hand and affix the seal of said court, at Trenton, in said district, this seventh day of October, eighteen hundred and eighty-six.

S. D. OLIPHANT, *Clerk.*

340 Supreme Court of the United States, of the Term of October, one thousand eight hundred and eighty-eight.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, Plaintiffs in Error,
vs.
THOMAS H. MORRISON & GARDNER A. Hutchinson, Survivors, Defendants in Error.

Case on Docket, No. 473. On Writ of Error to the Circuit Court of the United States for the District of New Jersey.

Stipulation.

Judgment in said United States circuit court having been rendered in this cause in favor of the defendants in error upon a demurrer filed by the plaintiffs in error to the replication to the pleas lastly pleaded therein, and said demurrer having been overruled and said replication sustained by the court, thereby ruling that the defences set up in the third, fourth, fifth, and sixth pleas were bad and insufficient as against the plaintiffs, alleging themselves to be *bona fide* purchasers in open market without notice of any of the matters set up in such pleas, and all other pleas being withdrawn and abandoned and judgment rendered, the defendants below, plaintiffs in error aforesaid, desiring to cause said decision to be reversed by this writ of error, have sued out the same; and said writ having brought to the court the whole record in the cause, and the said record being

uselessly voluminous, and parties being desirous to save expense in printing, it is now, on this twenty-fifth day of June, one
341 thousand eight hundred and eighty-nine, stipulated by and between the parties aforesaid that all the counts in the declaration of the plaintiffs below in said record contained be omitted in printing the record in this court, excepting counts first and second, (Nos. 1 and 2), all said counts being in the same form with counts 1 and 2 and founded upon similar causes of action.

It is further stated that the first and second pleas contained in said record returned have been, under stipulation heretofore made, withdrawn.

ALVAH A. CLARK,
Att'y Bernards Twp.
CORTLAND & WAYNE PARKER,
Attorneys for Defendants in Error.

342 [Endorsed:] Sup. Court U. S. 1889, Oct. term. No. 195. The Inhabitants of the Township of Bernards, pl'ff in error, *vs.* Thomas H. Morrison *et al.* Stipulation in regard to printing record. Office Supreme Court U. S. Filed Jul. 5, 1889. James H. McKenney, clerk.

Endorsed on cover: New Jersey C. C. U. S. No. 195. The Inhabitants of the Township of Bernards, in the County of Somerset, plaintiffs in error, *vs.* Thomas H. Morrison and Gardner S. Hutchinson, survivors, &c. Filed October 16, 1886.

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ASSIGNMENT OF ERRORS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 195.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET, PLAINTIFFS IN ERROR,

vs.

THOMAS H. MORRISON AND GARDNER S. HUTCHINSON, SURVIVORS, &c.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED OCTOBER 16, 1886.

SUPREME COURT OF UNITED STATES.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET, *Plaintiffs,* *and* THOMAS H. MORRISON AND GARDNER S. HUTCHINSON, *Defendants.*	*In Error.* *Assignment of Errors, etc.*

And now at this day the plaintiffs in error assign the following causes of error:

First:—Because the Circuit Court decided that the demurrer filed by the said plaintiff in error to the replication to the pleas lately pleaded therein, should be overruled, thereby ruling that the defences set up in the third, fourth, fifth and sixth pleas were bad and insufficient as against the plaintiff below (defendants in error).

Second:—Because the said demurrer should have been sustained, and the plaintiff in error should have been permitted to proceed to the trial of the said cause, and prove,

1st:—That the proper and necessary written consents had not been obtained of the majority of the taxpayers of the said Township of Bernards, or their legal representatives, according to the provisions, true intent and meaning of the Act of the Legislature of New Jersey in the said declaration mentioned.

2d:—That the affidavit of William A. McMur-

try, the assessor, was not, when made and filed as stated in said declaration, true in fact, but was erroneous and untrue in the statement that the persons whose names were so signed to said paper writing constituted a majority of the taxpayers of said township in value, and also that the persons whose names were so signed to said paper writing constituted a majority of the taxpayers of such township for the year eighteen hundred and sixty-seven, and that they the said last mentioned persons represented a majority of the landed property of such township appearing upon the said assessment roll of said township for the year eighteen hundred and sixty-seven as in said declaration stated.

3d:—That the said alleged commissioners in the said declaration mentioned before the issuing of the said supposed bonds or writings obligatory in the said declaration mentioned, or of any of them, did not borrow on the faith and credit of the Township of Bernards any sum or sums of money whatsoever, nor were the said supposed bonds or writings obligatory or any of them executed, issued and disposed of by the said commissioners or a majority or any of them for money loaned to or borrowed by the said defendants, but were executed, issued and disposed of without any lawful consideration.

4th:—That the said several supposed bonds or writings obligatory in the said declaration mentioned were, and every one of them was, by the said commissioners in the said declaration mentioned, executed, issued and disposed of without the conditions precedent to the issuing of said bonds required by the Act of the Legislature hereinafter mentioned, having been done or performed, and without any lawful power or authority to issue said alleged bonds or writings obligatory, and contrary to and in violation of the said Act of the Legislature of the State of New Jersey, entitled "An act to authorize

certain Towns in the Counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868; and that all of which the said bearers or holders had due and sufficient notice at and before the time when they became possessed of the same.

Third:—Because the said Court overruled the said demurrer and ordered judgment in favor of the plaintiff (defendants in error), when the said demurrer should have been sustained, and judgment ordered for the defendants (plaintiffs in error).

CLARK & REED,
Attorneys Plaintiffs in Error.

Office Supreme Court U. S.
FILED.
JAN 7 1890
JAMES H. McKENNEY
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 195.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET, PLAINTIFFS IN ERROR,

vs.

THOMAS H. MORRISON AND GARDNER S. HUTCHINSON, SURVIVORS, &c.

Brief of ALVAH A. CLARK, for Plaintiffs in Error.

SUPREME COURT OF UNITED STATES.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET, *Plaintiffs in Error,* *vs.* THOMAS H. MORRISON AND GARDNER S. HUTCHINSON, *Defendants in Error.*	*In Error to the Circuit Court of the United States, for the District of New Jersey.*

STATEMENT OF CASE.

An Act entitled "An Act to authorize certain towns in the counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868, may be found in the laws of New Jersey for the year 1868, pages 915, &c.

"1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That on application in writing of twelve or more freeholders, residents of any township in either of the counties of Somerset, Morris, Essex and Union, situate along the route of said railroad, it shall be the duty of the Circuit Court of the county wherein such township is situate, within ten days after receiving such application, to appoint, under his hand and seal, not more than three freeholders, residents of such township, to be commissioners for such

township to carry into effect the purposes and provisions of this act, who shall hold their offices respectively for the term of five years and until others shall be appointed.

"2. That it shall be lawful for said commissioners to borrow, on the faith and credit of their respective townships, such sums of money not exceeding ten per centum of the valuation of the real estate and landed property of such township, to be ascertained by the assessment rolls thereof respectively for the year eighteen hundred and sixty-seven, for a term not exceeding twenty-five years, at a rate of interest not exceeding seven per centum per annum, payable semi-annually, and to execute bonds therefor under their hands and seals respectively; the bonds so to be executed may be in such sums and payable at such times and places as the said commissioners and their successors may deem expedient; but no such debt shall be contracted or bonds issued by said commissioners of or for either of said townships, until the written consent shall have been obtained of the majority of the taxpayers of such township or their legal representatives appearing upon the last assessment roll as shall represent a majority of the landed property of such township (including lands owned by non-residents) appearing upon the last assessment roll of such township; such consent shall state the amount of money authorized to be raised in such township, and that the same is to be invested in the stock of the said railroad company, and the signatures shall be proved by one or more of the commissioners; the fact that the persons signing such consent are a majority of the taxpayers of such township, and represent a majority of the real property of such township, shall be proved by the affidavit of the assessor of such township endorsed upon or annexed to such written consent, and the assessor of such township is hereby required to perform such service; such consent

and affidavit shall be filed in the office of the clerk of the county in which such township is situated, and a certified copy thereof in the town clerk's office of such township, and the same or a certified copy thereof shall be evidence of the facts therein contained, and received as evidence in any Court of this State, and before any Judge or Justice thereof."

Bonds were issued under these provisions dated January 1st, 1869. On some of these suit was brought. No part of the money secured by these bonds, either of principal or interest, has been paid. The declaration sets out that on December 17th, 1868, a paper writing was filed in the office of the Clerk of Somerset County, in which the Township of Bernards is situated, purporting to be signed by divers taxpayers and land owners of said township, the purport and effect of which was that the persons signing the same consented that the commissioners appointed for said township, to carry into effect the provisions of said statute, might borrow on the credit of said township $130,000, and issue bonds of the township therefor, which money should be invested in the stock of the Passaic Valley and Peapack Railroad Company, and that such commissioners might exercise full and complete power for such township to carry into effect the purposes and provisions of the act. That to such paper was annexed the affidavits of persons therein alleging themselves to be such commissioners, to the purport and effect that the said several signatures of such taxpayers and land owners were genuine, also an affidavit of one McMurtry, therein alleging himself to be assessor of said township, to the effect that he had inspected the names signed to said paper, also the assessment roll of the township for the year 1867; that he knew the taxpayers of said township, and that the persons whose names were signed to such paper constituted a majority of the

same, and represented a majority of the real property in such township in value.

The declaration then sets out that a copy of said paper, together with the several affidavits thereto annexed, certified by the Clerk of Somerset County under his hand and the seal of the county, was filed in the office of the Clerk of the Township of Bernards.

The declaration then sets out the execution of bonds issued by the defendants, by and under the hands and seals of such commissioners, for $1,000, dated January 1st, 1869, payable in twenty-one years, bearing interest at seven per cent., payable semi-annually. Also six coupons for $35 each, upon each bond alleged to be due at the time the suit was brought. The declaration described the bonds as executed "by and under the hands and seals of the said J. H. A., I. G., and O. R. S., commissioners of said township, duly appointed and sworn, as directed by the provisions of said Act of the Legislature of New Jersey, entitled, 'An act to authorize certain towns in the Counties of Somerset, Morris, Essex and Union to issue bonds, and take stock in the Passaic Valley and Peapack Railroad Company,' approved April 9th, 1868, and alleged as follows: 'And it was by said bond then and there declared that the same was one of a series of like tenor, amounting in the whole to the sum of $127,000, issued on the faith and credit of said township in pursuance of said act, entitled, &c.'" And the said bond was afterward, and before the same was issued, to wit, on the first day of January, 1869, duly registered in the office of the Clerk of said County of Somerset, by William Ross, Jr., then Clerk of said County, and the words "Registered in the County Clerk's office" printed across the face of the same, and the name, "William Ross, Junior, County Clerk," written by such Clerk under said last-mentioned printed words on the face of the same.

It alleges that before May 1st, 1874, the plaintiffs became, for valuable consideration, the owners of the bonds upon which suit is brought, by purchase of the same at public market.

The defendants filed several pleas which by stipulation have been reduced to four:

1. That before the issuing of said bonds by the commissioners mentioned in the declaration, the written consent had not been obtained of the majority of the taxpayers of such township, or their legal representatives, appearing upon the last assessment roll of such township, and also representing a majority of the landed property of the township, stating the amount to be raised, and that the same was not invested in such stock according to the intent of such act.

2. That the said affidavit of McMurtry, to the effect set forth in the declaration, was not in fact true.

3. That such commissioners did not borrow any money for which said bonds were given, nor were said bonds disposed of for money loaned, but were disposed of by the commissioners without lawful consideration.

4. That said bonds were issued, executed and disposed of without the performances of the conditions precedent to issuing them required by the said act, and without lawful power or authority to issue them.

To this the plaintiff replied by several answers, one of which is to all the pleas above named, and to the effect that after the issuing of the said bonds, to wit, on the first day of January, 1870, the plaintiffs purchased said bonds in open market of divers individuals other than the said commissioners, and which individuals severally had lawful possession of the same, and paid for each of them a sum of money equal to the amount therein expressed and promised to be paid by said defendants; and at the time of such purchase and payment the

plaintiffs had no knowledge or notice of the matters set up in the pleas, wherefore they pray judgment of their debt aforesaid, together with their charges.

To this replication the defendants demurred, and the plaintiff's joined, and judgment thereupon was ordered, overruling the demurrer.

Such is the case, and, it is submitted, presents the following propositions for the plaintiffs :—

That where the law authorizing the issue of a municipal bond requires as an essential to it's validity that certain conditions therein have been performed before it's issue, a statement upon the bond by officers authorized to adjudicate as to such performance that the conditions have been complied with, or the mere issue of such bonds by officers qualified, estops the municipality from setting up as a defence to an action on the bond, that the conditions have not been complied with.

BRIEF.

The question raised upon the demurrer is: Can the township interpose the defence of fraud to the action upon the bonds in the hands of the plaintiffs, who allege themselves to be bona fide purchasers in open market without notice of the defences set up in the pleas?

Our insistment is:

I.

Although the bonds sued upon are negotiable instruments, they were fraudulently issued, and the requisites necessary to the issuing of the bonds were such as to put a prudent person on guard, thereby giving notice of the fraud.

This proposition raises the following inquiries:—

First:—Had the statutory conditions precedent been complied with?

Second:—What notice was there of the non-performance of the conditions precedent?

Third:—What fraud was imposed upon the township in the issuing of these bonds, of which the purchaser had notice?

A. Had the statutory conditions precedent to the issuing of these bonds been complied with?

The act of April 9th, 1868, gave the authority for the issuing of these bonds.

Our insistment is that the conditions of the act must be strictly complied with.

By that act the written consent of the majority of the taxpayers of the township, or their legal representatives, as appeared upon the *assessment roll of* 1867 (that being the "last assessment roll"), as required by Section 2 of the act, was never obtained.

This the township desires to prove:

First:—That for the year eighteen hundred and sixty-seven, the duplicate or assessment roll shows there were eight hundred and sixteen names in number, of all taxpayers, real, personal, resident and non-resident.

Second:—That the Commissioners procured in 1868 of the taxpayers of 1867, 242 signatures, and in 1869, 174 additional, making a total of 416.

Third:—That of those procured in 1869 there were 58 names that were not upon the assessment roll of eighteen hundred and sixty-seven.

Fourth:—That of those procured in 1868 there were 10 not on the assessment roll of eighteen hundred and sixty-seven.

Fifth:—That of the two hundred and forty-two signatures procured in 1868, there were five names twice written and counted.

Sixth:—That there were 26 names of persons who never signed the consents, forgeries.

Seventh:—That of the signatures procured in 1869 (in the list of the names not on the assessment roll of 1867), there were seven not voters, under age, one no taxpayer, one a pauper, not a taxpayer.

To recapitulate:

Names to consents procured in 1869, not on the assessment roll of 1867	58
Names to consents procured in 1868, not on assessment roll of 1867	10
Names to consents of 1868, twice written	5
Forgeries	28
	101

From 416 deduct 101, leaving 315 names.

410 being required there was a deficiency of 95 names.

We also in this connection desire to show that the

majority of the landed property of the township, as appears upon the assessment roll for 1867, never consented to the issue of these bonds.

And that such facts appear by an examination of the assessment roll, and the written consents filed with the County Clerk.

If these statements are facts, the commissioners had no authority to issue the bonds, and their acts were a fraud upon the township, and such a fraud that the purchasers had notice thereof.

It may be argued, however, that the commissioners had power under the act to adjudicate as to the performance of the conditions precedent, therefore the holders are protected against these defences.

Under the act, we insist, they are special and not general agents, and only had power to do the especial thing authorized by the act.

Morrison v. Bernards, 7 Vr., 224.

The commissioners are not to adjudicate upon the number of consents, whether such consents represent the number of taxpayers, including a majority of the land owners, but if an affidavit of the assessor of the township is endorsed upon or annexed to such consents, the same shall be evidence of the facts therein contained.

Such proof being filed with the consents they were authorized to issue the bonds.

This affidavit, we insist, is not conclusive.

It does not bind the township nor estop the township from showing the non-compliance with the statutory precedent conditions.

Here the provisions of the act were fully known.

It was the law.

An examination of the consents on file would have shown that the requirements of the act had not been complied with.

It would have shown:—

Names written with the same hand, giving notice that such persons had not given their *written* consent within the meaning of the act.

That no authority appears for any one to write such names.

It gave notice whereby a man, on inquiry, would be put on guard.

The purchaser who took such bonds without inquiry, did so by his own negligent carelessness.

The consents were public matters; the assessment roll likewise.

By an examination of these the foregoing facts would appear.

A slight calculation would have shown that the commissioners were acting without authority.

It was gross carelessness to take the bonds without any examination, and gross carelessness warrants the inference of bad faith.

Hamilton v. Vought, 5 Vr. (N. J. Law Rep.), 187.

In that case Hamilton had taken a note before maturity for a valuable consideration, and the defendant set up fraud as a defence.

Chief Justice Beasley in his opinion says, "Mere carelessness in taking the paper will not of itself impair the title thus acquired, but carelessness may be so gross that bad faith may be inferred from it. Nor is it necessary in order to defeat the title of the holder that he have actual knowledge of the facts and circumstances constituting the particular fraud."

In the case of the purchase of the bonds everybody knew they were for the purpose of aiding in the building of a railroad.

The method of building a railroad by the aid of bonds

from a municapality has always been such as to raise a question at once.

It was a *new* method in New Jersey.

The question whether the road had been built or not would be a natural inquiry; whether the bonds were protected by the Railroad Company? What such protection really amounted to?

The authority to issue the bonds?

Whether the acts necessary had been done?

An examination to ascertain what the correct answer to any of these inquiries would at once have put an ordinarily prudent person on guard, given notice, and he would not have taken the bonds, because he would have discovered that the railroad had not been completed, that it was not paying expenses, therefore no protection to the township.

That the consents had not been obtained.

That fraud had been practiced upon the township.

These are questions of fact.

Have we not a right to present them to a jury to be passed upon?

This is our insistment.

These facts are such that being presented to a jury they would be obliged to say an ordinarily prudent person would not have taken the bonds, therefore the present holders are not bona fide holders,

Should such holders profit upon such a fraud?

Equitably they could not ask more than they had paid, and by presenting all the facts to a jury, it could be determined whether the fraud had been practiced, whether the holders had notice of the fraud, and what sum they were entitled to, if any.

It may be claimed, however, that the bonds have been issued by the commissioners, the affidavit of the assessor being their guide and authority for so doing; that

the township would be estopped from going behind the affidavit.

Chief Justice Beasley, in the case of Morrison vs. Bernards, 7 Vr., 223–4, discusses that question, and we respectfully submit that authority is good law.

But it may be urged that the recitals in the bonds estops the township from inquiry into any of the conditions precedent as against a bona fide holder.

The recital is as follows, viz :—

"This bond is one of a series of like tenor, amounting in the whole to the sum of $127,000, issued on the faith and credit of the township in pursuance of an Act entitled, 'An act to authorize certain towns in the counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company,' approved April 9th, 1868."

There is nothing here showing authority on the part of the commissioners to adjudicate,

The fact that the recital says issued "in pursuance of the act" leads at once to the inquiry,

What is the act?

An examination shows :—

That consents of a majority of the taxpayers, including land owners on the assessment roll for 1867, *must be obtained in writing.*

That an affidavit of an assessor attached to such consents, showing they are a majority, directs the commissioners to issue the bonds.

That is the authority in pursuance of the act.

The commissioners are not called upon to pass upon anything excepting the records on file;

The consents;

The assessment roll.

The purchaser by the Act is directed to these.

The *law* requires these consents to be obtained before the bonds can be issued.

An examination of the cases will show that the Court never intended to adjudge that mere recitals by the officers of a municipal corporation precluded an inquiry as to the existence of legislative authority to issue them, even where the rights of a bona fide holder were involved.

Northern Bank of Toledo v. Porter, Twp. Trustee, 110 U. S., 609.

Dixon Co. v. Field, 111 U. S., 84.

Carroll Co. v. Smith, 111 U. S., 557.

ALVAH A. CLARK.

Office Supreme Court U. S.
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 195.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET, PLAINTIFFS IN ERROR.

vs.

THOMAS H. MORRISON AND GARDNER S. HUTCHINSON, SURVIVORS, &c.

Brief of JAMES R. ENGLISH, for Plaintiffs in Error.

SUPREME COURT OF THE UNITED STATES.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET AND STATE OF NEW JERSEY,
Plaintiffs in Error,
vs.
THOMAS H. MORRISON AND GARDNER S. HUTCHINSON, &c.
Defendants in Error.

In Debt,
In Error to the Circuit Court of the United States for the District of New Jersey.

The consequences which must befall the plaintiffs in error if the judgment brought up by the writ shall stand will be so ruinous that I beg the indulgence of the court that I may add a short word even at the risk of laying myself open to adverse criticism for doing so after the learned arguments offered.

The people of the Township of Bernards number only a few hundred. The number of inhabitants is less than it was twenty-five years ago. The value of the taxable property is no greater than it was then. The people are small farmers and country villagers. The greater part of the land is mortgaged. To pay the bonds, of which these are part, will take about one-seventh of the assessde value of all the property in the township.

More than twenty years ago certain parties conceived a project for the construction of a railway through this township. It was initiated by strangers.

By some curious legerdemain that act of the New Jersey legislature which is now before the court was passed and approved, and strenuous attempts made to bring the people under the operation of the statute *by their consent.*

Such attempts always failed. The necessary consents as contemplated by the act could not be procured. Fraud and forgery were then resorted to. The bonds were issued in the form before the court and now it is claimed that the plaintiffs must pay them because they contain certain recitals, *not of facts*, but of certain conclusions; conclusions not of the people of the township, nor of their chosen agents or committee, but of three persons appointed by a court before which they had no opportunity to be heard.

These plaintiffs in error under these circumstances resented the situation.

Eminent counsel advised contention.

The Chief Justice of New Jersey, upon some of these bonds of the defendants in error, ruled in behalf of the people of the township.

It seemed that the course of adjudication upon questions such as are presented was being somewhat modified, as the necessities of justice seemed to require.

A few of these modifications I beg to call the court's attention to.

Under the pleadings and stipulation the claim of defendant in error amounts to this:

Where a law authorizing the issue of a municipal bond requires as an essential to its validity, that certain conditions shall have been performed before its issue, a statement upon the bond by officers authorized to adjudicate as to such performance, by expression or implication that the conditions have been complied with, or the mere issue of such bond by officers so authorized estops the municipality from setting up as a defence to an action on the bond, that the conditions have not been complied with.

In this case the pleadings do not show that the bonds sued on contain a statement of the commissioners issuing them that the

precedent conditions were complied with before the issue. The allegation in this regard is only that "the bond is one of a series of like tenor amounting in the whole to the sum of $127,000, issued on the faith and credit of said township in pursuance of said act entitled, &c." This statement does not contain either an allegation of adjudication by the commissioners or a statement that the conditions precedent had been complied with. The great condition precedent was the consent of the people who were to be put under the obligation. This the commissioners did not decide, nor did they recite such consent as a fact. We respectfully submit that so weak a recital is not necessarily within the bounds of precedents to which the court will feel bound to yield.

Nearly all the cases for many years quote the case of Knox County v. Aspinwall, 21 Howard, 544, as a leading and controlling adjudication upon this question.

That case decided that the mere issue of bonds by the officers entitled to do so upon the happening of the contingency upon which their authority to issue bonds rested, and who were the judges of the happening of the contingency, would be construed to be a judicial determination that such contingency had happened, and that therefore the municipality was estopped from proving non-compliance with the conditions.

An assent to what seemed to be the meaning of the court in Knox County v. Aspinwall, seems to have continued until the decision in the case of The Town of Colona v. Eaves, 92 U. S., 484.

In that case the language of the court seemed to be capable of a construction reaffirming the doctrine, Knox County vs. Aspinwall, or what was supposed to be such.

Four of the justices, however, dissented; one of them reading an opinion dissenting from that part of the court's opinion that seemed to favor the Knox County case, and holding that a mere execution of the bonds by the public officers authorized to issue

them and *also authorized to judge as to the fulfillment of the precedent conditions*, would be only prima facie.

This case was followed by that of the Northern Bank vss Porter Township, U. S. 110, page 608.

In this case the justice reading the opinion explains the expressions of the court in the adjudications supposed to have been founded upon that of Knox County vs. Aspinwall, up to the time of that of the Town of Colona vs. Eaves, as follows :

" It is a maxim not to be disregarded that general expression in every opinion are to be taken in connection with the case in which they are used. If they go beyond the case they may be respected but ought not to control the judgment in a subsequent suit when the very point is presented for decision."

A few cases favorable to the contention of defendant in error (the more important) selected between the Knox County case and the Town of Colona case seem to show that in each instance there was in actual fact sufficient to indicate a propriety of decision in favor of the validity of the municipal bonds brought before the court without the necessity of recourse to the general expressions of the Knox County case.

In that case itself, the statement that a mere issue of the bonds would be construed to be a judicial determination that the conditions precedent had been fulfilled was unnecessary, for the *minutes of the board* of commissioners showed that in accordance with the wishes of the votes of the county as expressed in an election lately held, etc., they ordered the auditor to issue the bonds. The bonds upon their faces imported compliance with the law, and it seems to have been tacitly admitted on the argument that the votes of a majority of the taxpayers were cast in favor of an issue of the bonds.

In Supervisors &c., Hackett, 5 Wallace, 772, the people *by a majority had voted* for the bonds and the county had recognized them and raised money by tax to pay interest upon them.

In Meyers vs. City of Muscatine, 1 Wallace, 384, the people of the municipality to the number of 365 in favor of an issue of bonds and only 1 (one) against such issue, had voted upon the question. The court assigned this as one of the leading reasons.

An advance upon the doctrine of the case of Town of Colona vs. Eaves was made in the case of Dixon County vs. Field, 111 U. S., page 83.

The court in that case says that a *recital in a municipal bond of corporate acts of which the corporate officers had power to determine and certify*, does not estop the municipality from denying the certificate in matters of law, and a certificate reciting actual facts and that the bonds are conformable to law, when in fact they are not so conformable, will not make them so.

"That the estoppel does not arise except upon matters of fact, *and when there is authority of law given to* certain officers to determine *and such determination is in some way expressed.*" In that case the holders of the bonds were entitled to every consideration arising from innocence that the defendants here may claim.

In the case at bar no authority is *given by the expression of the statute* to the commissioners to make such determination. Neither do the pleadings show that the bonds contain an expression of such determination by the commissioners.

What we submit as a still greater advance is the case of Carroll Co. vs. Smith, 111 U. S., pg. 557.

In this case it was held that "a recital in a bond issued by a municipal corporation in payment of a subscription to capital stock in a railway company, that it is authorized by a statute referred to by title and date *does not* estop the municipality in a suit on a bond, from setting up that the issue was not authorized by a vote of two-thirds of the voters of the corporation as required by the constitution of the State. In that case also the plaintiff was an innocent, bona fide purchaser.

The bonds sued on in the case at bar are exactly such as are described in this opinion and the only law authorizing their issue contains a provision that they shall *not* be issued until the consent of the majority of the taxpayers of the preceding year shall have been obtained.

There can be no difference betweeen constitutional and statutory conditions. In one case the law is the constitution and in the other the statute.

We submit that case as parallel to the one before the court.

The case of Oregon vs. Jennings, 119 U. S., 74–92, it is submitted, is not conclusive in this case. There the recitals are stronger than in this case. Here the strongest recital is that the bonds were issued in *pursuance* of a certain act. Further in that case they were issued by the *corporate authorities*—the supervisor and town clerk. Here they were issued by three men *imposed* upon the township.

II.

There is another reason why the demurrer should not have been overruled and why the evidence offered should be received.

We submit that the commissioners who issued these bonds *were not authorized to adjudicate* upon the fulfillment of the conditions precedent, without which the bond would be invalid, either by the expression or implication of the act, and therefore the purchasers took them at their own risk, even if the commissioners did so adjudicate and recited their adjudication.

The second section of the act is the portion to which the court's attention is directed at this point of the case.

It provides as follows, in relation to the creation of the bonded debt :

1. Previous to the issue of the bonds the written consent of a majority of the taxpayers must be obtained.

2. That such majority shall be taken from the assessment roll for the year 1867, which by the way was a public township record.

3. That such consent shall state the amount of money to be raised in such township, and that the same is to be invested in the stock of the said railroad company.

4. That the signatures shall be proved by the affidavit of one or more of the commissioners.

5. That the fact that the persons signing such contents are a majority of the taxpayers of the township shall be proved by the affidavit of the assessors of the township.

6. That such consent and *affidavit* shall be filed in the office of the clerk of the county and a certified copy thereof in the office of the clerk of the township. No power is given by *expression* to the commissioners to make any adjudication.

The first requisite is to be proved by an inspection of the assessment roll of 1867. That assessment roll (a public record) and the written consent, made in the language of the act a public record, would show whether the condition had been complied with. A comparison of the two would have been conclusive. It cannot, therefore, be held that the commissioners by *implication* of the act had any adjudication to make in regard to this condition for the whole thing was matter of record. *It showed for itself.*

The third requisite by direction of the act *was to be apparent upon the fact of the consent*, which was to be filed and made matter of public record in both the county clerk's and township clerk's office. *That was to show for itself. There was no need* of adjudication, and if no need, no *implication* of power to make one arises. The fourth and fifth requisites *are to be proved*—the fourth by the affidavit of one or more of the commissioners, and the fifth by the affidavit of the assessor of the township.

The law does not say that these affidavits shall be submitted to the commissioners for adjudication.

In fact, no necessity could possibly exist for the affidavit of one or more of the commissioners to prove the signatures, *if the same commissioner or commissioners had authority to adjudicate* as to whether the signatures were genuine. Could the commissioner be witness and judge? Can it be that the statute means that the commissioner should adjudicate as to the genuineness of the signatures, when the only proof of such was to be his own affidavit?

So that these requisites *are to be proved* for some one not the commissioners. That some one could be no one but proposing purchases. No other could be interested.

The sixth requisite is that such consent and affidavit are to be filed, so that both in the county and in the township they shall be public records.

So that the purchaser of the bonds has opportunity—

a. To see the assessment roll of 1867.

b. To see the *consent* with the *signatures* and *affidavits appended*, showing the amount consented for.

From these *he can judge* whether a majority of the taxpayers, whose names appear on the assessment roll of 1867 have in writing signed a consent, that the consent states the amount to be raised, and that such amount shall be used to purchase stock of railroad company, and whether such consent bears the respective affidavits of commissioners and assessor prescribed by the act.

If he ascertained all these he was safe. This put him upon an inquiry which if prosecuted would certainly lead to the detection of the forgery.

There is nothing left here for the commissioners to adjudicate. The adjudication is left to the purchaser, and the act itself then goes on to say, not that the commissioners shall adjudicate, *but that they shall not*, for it prescribes the weight to be given to these records.

Such consent and affidavit, or certified copy thereof, when

filed shall be evidence in any *court* of this State and judge or justice thereof.

It does not say that they should be *received by the commissioners*, and it is doubtful if they would have been received in the court below without further proof.

Further, it is not made conclusive evidence. The act says *evidence*. No court will construe the expression so as to close the mouths of those who are to be affected.

We apprehend and submit that by the word "evidence" in a statute of this kind is meant prima facie evidence only, otherwise innocent parties might be left defenceless.

The evidence then is spread open to the public. A public record is made of the official statements and proofs, and a purchaser is bound to take notice of them, for they are made prerequisites *by a public law of which he is supposed to be cognizant, and no one else is given the power to adjudicate.* If no adjudication is shown by the recitals, the plaintiffs in error can not be estopped.

Innocent purchasers are charged with knowing the law.

Hoff vs. Jasper County., 110 U. S., page 53.

Anthony vs. County of Jasper, 101 U. S., page 693.

III.

There is still another reason why the evidence offered is entitled to reception, and under the pleadings the contention of the plaintiff in error should prevail.

In all the cases cited, and (if some have not been overlooked) in all cases of this kind that have been adjudicated by the Supreme Court in favor of bona fide holders of bonds, the latter have been issued by or under the direction of the *general officers* of the municipalities, their general legal agents.

In this case the commissioners were the *special* agents appointed for a *specific* purpose, with *specific* authority only.

This *specific* authority was to issue bonds upon the happening of *certain conditions*. Unless these conditions happened they had no power to act. The offer is to prove that they *did not happen*.

These conditions were fixed by public law, which law made the commissioners *special agents*.

If they had been general agents their declarations (if there are any) that the conditions had happened might have gone further to bind the township.

But the rule of law is, that those dealing with a special agent must inform themselves of the extent of his authority.

It should appear in the declaration then, that the pre-requisites to the exercise of power in their special agent have been performed. If not there it should appear in the pleadings following, so that an issue may be framed in fact. Such an issue has been framed in this case and avoided by the special replication set out in the state of the case.

This doctrine in this very case has been laid down in Morrison vs. Bernards, 7th Vroom, 210.

We do not cite a State case as governing in this court, but we submit the rule to be in the U. S. Courts, that all adjudication of a State court upon statutes of that State should be followed by the U. S. Courts, unless sound legal construction shall constrain the court otherwise.

The language of Chief Justice Beasley in the last case cited upon pages 223 and 224, and the reference to undoubted authority made by him, are respectfully urged as the law that should govern the New Jersey cases.

JAMES R. ENGLISH.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 195.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET AND STATE OF NEW JERSEY, PLAINTIFFS IN ERROR,

vs.

THOMAS H. MORRISON AND GARDNER S. HUTCHINSON, SURVIVORS, &c., DEFENDANTS IN ERROR.

BRIEF FOR DEFENDANTS IN ERROR.

CORTLANDT & WAYNE PARKER,
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THE W. S. SHARP PRINTING CO., 23 & 25 N. Warren St., Trenton, N. J.

SUPREME COURT OF THE UNITED STATES.

THE INHABITANTS of the TOWNSHIP OF BERNARDS, in the COUNTY OF SOMERSET and STATE OF NEW JERSEY,
Plaintiffs in Error,
vs.
THOMAS H. MORRISON and GARDNER S. HUTCHINSON, Survivors, &c.,
Defendants in Error.

In Debt.
In Error to the Circuit Court of the United States for the District of New Jersey.

STATEMENT OF THE CASE.

The writ of error removes the judgment of the Circuit Court aforesaid in a suit brought by the defendants in error against the plaintiffs in error, rendered upon a demurrer filed in said cause by the plaintiffs in error, defendants below, to a replication filed by the defendants in error, plaintiffs below, to certain pleas filed in said cause, all other pleas being, by said defendants below, withdrawn.

The action was debt, brought upon coupons once annexed to certain bonds, issued on the faith and credit of said township,

the plaintiffs in error, by certain commissioners of said township, duly appointed and sworn, in pursuance of, and said bonds were issued in pursuance of an act of the legislature of New Jersey entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railway Company," approved April 9th, 1868.

The declaration contained numerous counts (sixty-nine), alike in everything except the amount of the instruments sued upon. By stipulation, all but two of these counts are omitted from the transcript of record, "all of said counts being in the same form with these counts (Nos. 1 and 2) and founded upon similar causes of action." See page 20 of printed case.

These two counts are found on pages 5 to 10 inclusive. They state, substantially, that the township, the defendants below, on the 1st day of January, 1869, by and under the hands and seals of John H. Anderson, John Guerin and Oliver R. Stelle, commissioners of said township, duly appointed and sworn as directed by the provisions of said act of the legislature of New Jersey entitled as above written, did then and there make their certain bond, bearing date as aforesaid, and did thereby then and there acknowledge that they, said defendants, did owe to the bearer of said bond $1,000, which they did thereby promise to pay the holder thereof, at the American Exchange National Bank in the city of New York, twenty-one years after the date thereof, and also interest thereon, &c., and that it was by said bond then and there *declared*, that the same was one of a series of like tenor, amounting in the whole to the sum of $127,000, issued on the faith and credit of said township, in pursuance of said act entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railway Company," approved April 9th, 1868; and the said bond was afterwards, and before the same was issued, to wit, on said 1st day of January, 1869, duly registered in the office of the clerk of said county of Somerset by William Ross, Jr., then clerk of said county, and the words "Registered in the County Clerk's Office," printed across the face of the same, and the name "William Ross, Jr., County Clerk," written by said clerk under said

last-mentioned printed words on the face of the same, and there was then and there annexed to said bond six certain interest coupons for $35 each (describing them), which the declaration further set forth with requisite form.

To these counts, and all others in the declaration, the defendants below pleaded—1st, the general issue, *non est factum;* 2d, that John Guerin, John H. Anderson and Oliver H. Stelle were not commissioners as aforesaid; 3d, that no written consent of the majority of taxpayers had been obtained; 4th, that though it was true that there had been a writing filed in the Somerset county clerk's office purporting to be the legally requisite consent, and so shown to be by proper affidavits annexed, yet one of the affidavits was untrue, and that the consent-roll filed did not constitute a majority of the landed property of the township required by the statute; 5th, that the commissioners did not borrow, on the faith and credit of the township, any sums of money whatever, nor were the bonds delivered for money loaned to defendants, but that they were executed, issued, delivered and disposed of by said commissioners without any lawful consideration whatever; 6th, that the bonds were by said commissioners executed, issued and disposed of without the conditions precedent to issuing said bonds, required by the legislative act, and contrary to and in violation of the same, whereof plaintiffs, when they became holders or bearers of the bonds, had due and sufficient notice.

The first plea, *non est factum*, as already stated, was withdrawn; so was the second plea, denying that the persons named, Anderson, Guerin and Stelle, were commissioners of the township duly appointed and sworn.

To the third, fourth, fifth and sixth pleas the plaintiffs filed, first, replications taking or tendering issue on each respectively, and, second (according to the practice in New Jersey, N. J. Rev., p. 867, pl. 120), the following plea:

"And for a further replication to the said pleas by the said defendants thirdly, fourthly, fifthly and sixthly above pleaded, the said plaintiffs say, that by reason of anything by the said defendants in said several pleas or either of them alleged, the said plaintiffs ought not to be barred from having and maintaining their aforesaid action against the said defendants, because

they say, that after the issuing of said several bonds or writings obligatory by said commissioners, to wit, on the first day of January, one thousand eight hundred and seventy [a date after the date of said bonds], the said plaintiffs purchased the said bonds or writings obligatory in open market of divers individuals other than the said commissioners, and which individuals had severally lawful possession of the same, and paid for the same to said individuals so in possession of the same, severally, a large sum of money, to wit, the sum of money for each of said bonds or writings obligatory equal to the amount therein expressed and promised to be paid by said defendants; and at the time of such purchase and payments said plaintiffs had no knowledge, notice, information or suspicion of any of the matters or things by said defendants in said third, fourth, fifth and sixth pleas severally alleged and pleaded as matters of defence to this action; and at the said time of said purchase the said plaintiff supposed and verily believed that the said bonds or writings obligatory had been made and issued, in all respects in accordance with said terms of the act of the legislature and the law of the land, and that all matters, things and conditions precedent to their being so issued, required and prescribed by said act of the legislature, had been in all things fulfilled, done and performed; and this the plaintiffs are ready to verify, wherefore they pray judgment and their debt aforesaid, together with their charges by them sustained on occasion of the detention thereof to be adjudged to them."

Thereupon the defendants rejoin in the following words:

"And the said defendants say, that the replication of the plaintiffs last pleaded being a second replication to the third, fourth, fifth and sixth pleas, and the third replication to the fourth plea of the defendants above pleaded, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against the said defendants, and that they, the said defendants, are not bound by law to answer the same, and this the defendants are ready to verify, wherefore by reason of the insufficiencies of said replication in this behalf the said defendants pray judgment

if the said plaintiffs ought to have or maintain their aforesaid action thereof against them."

To this demurrer the plaintiffs filed their joinder in the following words:

"And the said plaintiffs say, that the replication of the plaintiffs lastly pleaded and being the second replication to the third, fourth, fifth and sixth pleas, and a third replication to the fourth plea of the defendants above pleaded, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to have and maintain their aforesaid action thereof against the said defendants, and this the said plaintiffs are ready to verify and prove as the court here shall direct and award.

"Wherefore inasmuch as the said defendants have not answered the said replication, nor hitherto in any manner denied the same, the said plaintiffs pray judgment and their debt aforesaid, together with their damages by them sustained on occasion of the detention thereof to be adjudged to have," &c.

The last entry on the record brought before this court (see page 18) runs thus:

"A demurrer having been filed by said defendants to the replication of the plaintiffs by them lastly pleaded, being a second replication to the third, fourth and sixth pleas, and a third replication to the fourth plea of said defendants, and the plaintiffs having thereupon joined in demurrer, and the matter being now argued before the court by Alvah A. Clark and James S. English, on the part of the defendants, and Cortlandt Parker, on the part of the plaintiffs, and duly considered by the court, it is now, on this thirty-first day of March, one thousand eight hundred and eighty-five, ordered and adjudged by the court that the said demurrer be overruled, with costs.

"Judgment signed this thirty-first day of March, A. D. one thousand eight hundred and eighty-five.

"JOHN T. NIXON, *J.*"

And thereupon, on the next day, judgment was formally given and signed upon an assessment of damages filed, &c., for the sum of $8,353.96 debt and $239.44 costs in favor of said plaintiffs and against the said defendants.

It will be observed by the court that the declaration (page 5) alleges that, by each of these bonds, it was declared that the same was one of a series of like tenor, amounting in the whole to the sum of $127,000, issued on the faith and credit of said township, the defendants in the suit, in pursuance of said act entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railway Company," approved April 9th, 1868, and that the said bond was afterward and before the same was issued, to wit, on the 1st day of January, 1869, duly registered in the office of the clerk of the county of Somerset by William Ross, Jr., then clerk, and the words "Registered in the County Clerk's Office" printed across the face of the same, and the name "William Ross, Jr., County Clerk," written by said clerk, under last-mentioned printed words on the face of the same; that the declaration averred that the plaintiffs had become, for a valuable consideration by them paid, before the 1st day of May, 1874; and then were, holders and bearers of the bonds and coupons, by purchase of the same in public market.

This asseveration, already contained in the declaration, of *bona fide* purchase without notice, is renewed in the replication demurred to. The demurrer admits the issue of the bonds by the township through the commissioners, the subsequent purchase thereof by the plaintiffs, in open market, of individuals who had lawful possession thereof, and for a sum of money paid to those individuals equally to the amount of the bonds respectively, and without notice or suspicion of any want of formality pleaded as matter of defence, but with full belief at the time that the bonds had been made and issued, in all respects, in accordance with the terms of the act of the legislature and the law; and that all conditions precedent to their being so issued had been fulfilled. The demurrer also admits that the bonds contained the recital already stated, that they were issued on the faith and credit of the township *in pursuance of the legislative act* and with the certificate of registry *duly* and *truly endorsed thereon.*

The single question then arising is, can the defendants set up against the recovery upon these bonds, in their character nego-

tiable, and purchased before due for valuable consideration, without notice, the absence of prescribed formalities?

This question has been, it is supposed, decided by this honorable court in many cases, and is scarcely susceptible of argument. For convenience sake some of these cases are cited:

Commissioners of Knox County *v.* Aspinwall, 21 How. 539–546.
Moran *v.* Commissioners of Miami, 2 Black 722–732.
Mercer County *v.* Hacket, 1 Wall. 83–97.
Town of Coloma *v.* Eaves, 2 Otto 484–494.
Humboldt *v.* Long, 2 Id. 642–651.
Commissioners of Douglass County *v.* Bolles, 4 Id. 101–110.
County of Warren *v.* Marcy, 7 Id. 96–110.
Pompton *v.* Cooper Union, 11 Id. 196–204.
Harter *v.* Kernochan, 13 Id. 562–574.
Insurance Co. *v.* Bruce, 15 Id. 328–333.
Carrier *v.* Shawangunk, 10 Fed. Rep. 220–223.
Pana *v.* Bowler, 107 U. S. 529.
Montclair *v.* Ramsdell, 107 Id. 147.
Sherman Co. *v.* Simons, 109 Id. 739.
Green Co. *v.* Conness, 109 Id. 104.
Toledo *v.* Porter Township Trustees, 110 Id. 608.
Dixon Co. *v.* Field, 111 Id. 83.
Merchants Bank *v.* Bergen Co., 115 Id. 390.
New Providence *v.* Halsey, 117 Id. 338.
Oregon *v.* Jennings, 119 Id. 74, 92.
Livingston Co. *v.* Portland Bank, 128 Id. 127.

San Antonio *v.* Mehaffey 96 U. S. 312

There seems to have been several classes of restrictions upon the general doctrine established, as to the effect of these recitals—first, when the issue of the bonds is forbidden, or not authorized by statute; second, when the recital is of law and not of fact; third, when the reciting party has not authority to do the act and make the recital; fourth, when the recital is itself imperfect.

Replying to the brief of plaintiffs in error, it is respectfully submitted that, to none of these classes do the bonds in question belong. The recital in them is, that "the bond is one of a series

of like tenor, amounting in the whole to the sum of $127,000, issued on the faith and credit of said township, in pursuance of said act entitled 'An act to authorize certain towns in the counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company,' approved April 9th, 1868."

This is stated by commissioners—agents of the township for signature and for issue—though appointed by judicial authority.

And, additionally, there appears upon each bond the county clerk's certificate of registry. The bond, before its issue, is registered in the county clerk's office, and his certificate thereto appears upon the bond.

What was necessary for the validity of these bonds? First, a statute authorizing them; second, the due appointment of commissioners; third, *pursuance* of the act in its directions as to obtaining consents, and filing them; fourth, the signature, with or without seal, of the commissioners; fifth, the registry, and its endorsement on the bonds.

The production to the clerk, and procuring the registry, are evidently to be the acts of the commissioners, and the commissioners are themselves to prove the signatures to the consents.

There is no duty, save the registry and its certificate, that is not to be performed or overseen by the commissioners. Can it be doubted that it is the commissioners who decide on the facts of the performance of all required formalities?

Note, too, the language of the fourteenth section of the act. It requires "all bonds issued *in accordance with the provisions of this act" to be registered in the county clerk's office*, which fact is to be "certified" by that officer upon each bond, "under his hand." Without this registry, says the act, "no bond shall be valid." Is it not plain that the certificate of this registry is legal notice to the buyer or taker that the bond *was* issued in *accordance with the provisions* of the act, and *is* valid? And by whom is this certificate published? By no one but the commissioners. The commissioners, only, can have the bonds before registry. They have them, and issue them afterwards. Does not the statute designate them as adjudicating parties as to the fact of the bonds being issued in pursuance of the act? Is not the certificate of registry, given to the world by them, a certifi-

cate of validity? Is it not their adjudication? Surely this recital, or that of the township through them, with the endorsed certificate of registry, must estop contest on the fact of mere regularity.

This case is well-nigh, if not completely adjudicated by this court, in relation to just such New Jersey bonds. Montclair *v.* Ramsdell, 107 U. S. 148 (and see 158), refers to a statute, and a form of bond, whose language is identical with that of those to which this case relates. Mr. Justice Harlan says (page 158): "Legislative authority for an issue of bonds being established by reference to the statute, and the bonds reciting that they were issued in pursuance of the statute, the utmost which plaintiff was bound to show, to entitle him *prima facie* to judgment, was the due appointment of the commissioners and the execution by them, in fact, of the bonds. It was not necessary that he should, in the first instance, prove either that he paid value, or that the conditions preliminary to the exercise by the commissioners of the authority conferred by statute were, in fact, performed before the bonds were issued. The one was presumed from the possession of the bonds, and the other was *established* by the statute authorizing an issue of bonds, and by proof of the due appointment of the commissioners, and their execution of the bonds, *with recitals of compliance with the statute.*"

While the precise point is not met by the case that the township is estopped by the recitals, all that is said implies that proof of open market purchase for value without notice, entitled the holder to claim such estoppel against any proof contrary to the recitals.

New Providence *v.* Halsey, 117 U. S. 337, is a case referring to bonds of this same sort—issued in pursuance of the same act. The legal authority and status of the commissioners is thereby decided, and it was held that a purchaser had the right to rely on the decision of the commissioners as conclusive in respect to the amount that could be put out under the statute, and that it estopped the township from setting up against a *bona fide* holder that the issue was in excess of the amount authorized. This "decision," it is to be observed, is in the recital, which states that the bond is one of a series of $127,000 (in this case) issued "in pursuance," &c. The amount is part of the "pursuance."

And a decision that there is an estoppel against denying that, decides the same thing as to everything which is "in pursuance" of the statute.

And this decision is in accordance with two New Jersey decisions, Cotton *v.* New Providence, 47 N. J. L. 401, and Mutual Life B. Co. *v.* Elizabeth, 42 Id. 235.

The language of the court in the case of Bernards *v.* Stebbin, 109 U. S. 351—a controversy upon the very bonds now in suit—implies the same thing as to the status and power of the commissioners. They are held to be the "agents of the township, issuing the bonds, rather than donees of a statutory power in the ordinary sense" (*per* Mr. Justice Gray, p. 351), and the plain leaning of the opinion is towards agreement with the Chancellor of New Jersey in Lane *v.* Schomp, 5 C. E. Gr. 82.

The leading case in this court, Commissioners of Knox Co. *v.* Aspinwall, 21 How. 539–546, is identical with this. There was in that case statutory authority for the issue of bonds, after certain formalities, by a board of commissioners. It was admitted that an important formality, an election, had not been properly held. But the board declared that "it was issued in part payment of a subscription, &c., *by order of the board of commissioners in pursuance* of the third section of the act, &c., of the State of Indiana, approved 15th January, 1849," &c. The language of the recital, it is to be observed, is the same as in the bonds in controversy. Mr. Justice Nelson delivered the opinion of the court, and held that as "the bonds on their face imported a compliance with the law under which they were issued, the purchaser was not bound to look further for evidence of a compliance with the conditions to the grant of the power."

Exactly the same recital, "in pursuance of," &c., existed in the bonds of the county of Miami, and the same decision was given, Mr. Justice Wayne delivering the opinion of the court in the case of Moran *v.* Commissioners of Miami, 2 Black 722–732.

In Mercer County *v.* Hacket, 1 Wall. 92, Mr. Justice Grier said: "The bonds declare on their face that the faith, credit and property of the county is solemnly pledged, under the authority

of certain acts of the Assembly, and that *in pursuance* of said act the bonds were signed by the commissioners of the county. They are on their face complete and perfect, exhibiting no defect in form or substance; and the evidence offered is to show that the recitals on the bonds are not true, not that no law exists to authorize their issue, but that the bonds were not made 'in pursuance of the acts of Assembly' authorizing them." He then reviews and affirms Knox County *v.* Aspinwall, and decides the county estopped from denying the validity of the bonds against a *bona fide* holder.

The case of the Town of Coloma *v.* Eaves, 92 U. S. 484–494, reviewed and established that of Knox *v.* Aspinwall. Mr. Justice Strong, in his opinion, carefully discussed the force of these recitals as against *bona fide* holders. The recital in that case was perhaps scarcely as strong, though substantially the same with that in Knox *v.* Aspinwall, or in the case before the court. The doctrine established is that "when, by legislative enactment, authority has been given to a municipality or to its officers, to subscribe for the stock of a railroad company, and to issue municipal bonds in payment, but only on some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the enactment that the officers of the municipality were invested with power to decide whether that condition has been complied with, their recital that it has been, made in the bonds issued by them and held by a *bona fide* purchaser, is conclusive of the fact, and binding upon the municipality; for the recital is itself a decision of the fact by the appointed tribunal."

In that case the court reason that the duty of ascertaining whether the directions of the act have been followed was plainly intended to be vested somewhere, and once for all; and the only persons spoken of who have any duties to perform respecting the election, &c., are the town clerk and supervisor or other executive officer of the town. They signed the bonds.

All the reasoning of the court on pages 487–489 applies with equal force to the issue of the bonds in suit. And the case *decides* the one before the court.

In Moultin *v.* Rockingham, 92 U. S. 631, and Humboldt *v.* Long, Id. 642, this court again re-affirmed the doctrine of Knox *v.* Aspinwall and Coloma *v.* Eaves.

Douglass Co. *v.* Bolles, 94 U. S. 101–110, is like the two last in the language of recital, and in the decision given.

In County of Warren *v.* Marcy, 97 U. S. 104, Mr. Justice Bradley reviews the decisions already quoted, including Coloma *v.* Eaves. The recital there was scarcely as extensive as in the case in hand.

Pompton *v.* Cooper Union, 101 U. S. 197, opinion by Mr. Justice Swayne, is exactly in point. The bonds were issued under the Montclair act, with which that involved in this case is identical, and the case decides that the bonds of the township of Pompton, issued by the commissioners appointed for that township, and reciting that they are issued in pursuance of an act of the legislature of New Jersey, approved, &c., are valid in the hands of a *bona fide* purchaser for value before maturity.

The court likewise decided that the commissioners were the sole judges, as to the points mentioned, with reference to parting with the bonds, and their decision was conclusive.

In Harter *v.* Kernochan, Mr. Justice Harlan declared the same doctrine of estoppel anew in reference to bonds authorized by a statute of Illinois, and reciting that they were issued *in pursuance* of the authority conferred by the same, the bonds being given by officers of the township who issued them.

In Insurance Co. *v.* Bruce, 105 U. S. 328, Mr. Justice Harlan again declared the opinion of this court, enforcing the same doctrine, in a case where the recital represented, though untruly, that the requirements of the statute had been complied with.

In Pana *v.* Bowler, 107 U. S. 529, Mr. Justice Woods re-affirmed the same doctrine, upon a recital of the occurrence of the election, which was a necessary condition precedent to the issue of the bonds, the issue being by the township supervisor and clerk.

Sherman Co. *v.* Simons, 109 U. S. 739, simply re-affirms the doctrine, without special detail as to the recitals in the bonds.

The same is true as to Green Co. *v.* Conness, 109 U. S. 104.

Toledo *v.* Porter Trustees, 110 U. S. 608, states the doctrine of estoppel as preventing a municipal corporation which issues a bond reciting on its face that it is issued in pursuance of acts of the legislature, from disputing the facts recited—but not from denying the existence of legislative authority to make the bonds. There the law required the county commissioners to submit to the people, at a special election, the question of subscribing in aid of a railroad, and if the county subscription should not be authorized, then the question of subscriptions by township trustees might be submitted to the people of the townships. Without such a county election, there was a township one, under which the bonds were issued. It was held that no legislative authority had been acquired by the township, and so the recital of the election had was not operative to authorize the bonds. In this case, the previous decisions were examined and reviewed, and it was held that the facts which a municipal corporation issuing bonds in aid of a railroad is not permitted, against a *bona fide* holder, to question, in face of a recital in the bonds of their existence, are those connected with or growing out of the discharge of the ordinary duties of such of its officers as were invested with authority to execute them, and which the statute, conferring the power, made it their duty to ascertain and determine before the bonds were issued.

This case inaugurates the restriction mentioned in this brief as the first class. But it has no bearing on the case in hand. Here there was a law authorizing issue of bonds, and the pursuance of that law in all its details was certified by the commissioners whose duty it was to see to them before issuing the bonds, and who were the agents of the township therefor. The law and the judicially created authority of the commissioners are admitted by the pleadings—and so is the *bona fide* character of the holding. The decision really only enforces *dicta* by Justice Grier, Justice Nelson and others, when holding that recitals estop.

Dixon County *v.* Field, 111 U. S. 83, illustrates the second class of restrictions on the general doctrine mentioned. The court decided that the constitution of Nebraska did not authorize the bonds, and that they were issued without warrant of law. And so it held that the recital was as to matter of law only, and of facts which the corporate officers had no right to determine. But the opinion re-affirms Mr. Justice Strong, in Coloma *v.* Eaves.

Merchants Bank *v.* Bergen Co., 115 U. S. 384, was a case where there were no recitals, though the court, through Mr. Justice Field, enunciated the principle that would govern were there any, in language which justifies the contention of the defendants in error here. See page 391.

Oregon *v.* Jennings, 119 U. S. 74, 92, seems conclusive as to the case in hand. Says Mr. Justice Blatchford (page 92): "Within the numerous decisions by this court on this subject, the supervisor and the town clerk, they being named in the statute as the officers to sign the bonds, and the 'corporate authorities' to act for the town in issuing them to the company, were the persons entrusted with the duty of deciding before issuing the bonds, whether the conditions determined at the election existed. If they have certified to that effect in the bonds, the town is estopped from asserting, as against a *bona fide* holder, that the conditions prescribed by the popular vote were not complied with. * * * The recitals are within the adjudged cases in this court as to the effect of recitals in bonds, that they are issued 'under authority' of a specified statute, and 'under and by virtue of' that statute, and they estop the town from taking the defence that the first division of the road was not completed, as against the plaintiff, as a *bona fide* holder of the bonds."

Carroll County *v.* Smith, 111 U. S. 562, is cited in the brief for plaintiff in error. But it is only a decision that the recital in the bonds is imperfect, and therefore creates no estoppel. The decision affirmed the judgments below, which was for the plaintiff. But the question of the rights of a *bona fide* holder without notice, &c., did not arise.

Livingston County *v.* Portsmouth Bank, 128 U. S. 127, is the last case in this court upon the subject. It simply reiterates the well-established doctrine herein contended for.

The brief for plaintiff in error shows clearly the particulars of the defence intended by its pleas. It was to prove fraud upon the township by the issue of bonds when, as asserted, the consents filed were not sufficiently numerous, and many of them were impositions.

But plaintiff in error forgets that the commissioners were their agents. No fraud is charged upon them. Apparently they were only imposed upon.

But whether they defrauded the township designedly, or were themselves the victims of their credulity or carelessness, one thing is certain. They, and the township through them, have obtained the money of the investors by false pretence. Or, if the township did not get the money or the stock, to buy which it was raised, it is not the fault of those who bought the bonds. They paid their money in good faith, resting on the assurance of the agents of the township, that the requirements of the statute had been fulfilled. This court cannot sanction the defence attempted without aiding in a manifest fraud—the obtaining of moneys by false pretence.

The case is free from all dispute as to facts. They are admitted on the record. The bonds were authorized by statute. The commissioners were duly appointed. The bonds were registered and certified. They recited that they were issued in pursuance of the act. They were signed, sealed and issued by the commissioners. The plaintiffs below paid their face, relying upon what they were told by the commissioners and the township in the bonds, without notice or suspicion of irregularity or wrong, long before the bonds were due. It is submitted that the judgment below must be affirmed.

CORTLANDT PARKER.

APPENDIX.

The form of each of said bonds (amounts and times when due excepted) is as follows:

No..... ..... United States of America. $..... .....

Township of Bernards, Somerset County, State of New Jersey.

The Inhabitants of the Township of Bernards, in the County of Somerset, acknowledge themselves to owe to bearer five hundred dollars, which sum they promise to pay the holder hereof, at the American Exchange National Bank in the city of New York, twenty-three years after the date hereof, and interest thereon at the rate of seven per cent. per annum, payable semi-annually, on the first days of July and January in each year, until the said principal sum shall be paid, on the presentation of the annexed interest coupons at the said bank.

This bond is one of a series of like tenor, amounting in the whole to the sum of one hundred and twenty-seven thousand dollars, issued on the faith and credit of said township in pursuance of an act entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868.

In testimony whereof, the undersigned, commissioners of the said township of Bernards, in the county of Somerset, to carry into effect the purposes and provisions of the said act, duly appointed, commissioned, and sworn, have hereunto set our hands and seals the first day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

JOHN H. ANDERSON, [L. S.]
JOHN GUERIN, [L. S.]
OLIVER R. STELLE, [L. S.]
Commissioners.

(On right margin:) Five hundred dollars.
(On left margin:) Five hundred dollars.
Registered in the county clerk's office.

WILLIAM ROSS, JR.,
County Clerk.

Office Supreme Court U. S.
FILED.
JAN 31 1890
JAMES H. McKENNEY,
CLERK.

FURTHER APPENDIX.

Section 1.

The commissioners, according to the act, are "for such townships"—"to carry into effect the purposes and provisions of this act."

Section 2.

They borrow.

They ascertain from the assessment rolls, how much.

They determine the denomination or amount of each bond.

They determine that the requisite consents have been obtained. They obtain the consents, for they have to prove them or to know the signatures.

They get the affidavit of the assessor.

Section 3.

They dispose of the bonds, and invest the money in railroad stock.

They, in the name of their township, subscribe for and purchase stock in the railroad company.

They act at stockholders' meetings, and at directors', if elected.

Sections 4, 5.

They report yearly how much is needed to pay interest or principal, and agree, "in behalf of their respective townships," with the railroad company that the company shall advance the interest "on the *bonds issued by said township*."

Section 6.

They may exchange stock for bonds and cancel them, or they may sell the stock.

SECTION 7.

Their reports of deficiency is the authority for the levying tax therefor.

They had to give bonds for faithful discharge of duty.

SECTION 12.

The three commissioners for each township constituted a "board" to act for the townships respectively, a majority to form a quorum.

No one is to obtain the registry of bonds and the certificate of the county clerk, unless that duty belongs to the commissioners. Plainly it was theirs. All shows that *their* action was judicial. The clerk only certified as does the clerk of any court—as is required of the assessor as to the tax list.

Another suggestion, already made, but not dwelt upon.

Section 14 of the statute authorizing the bonds enacts, "that all bonds issued in accordance with the provisions of this act shall be registered in the office of the county clerk of the county in which the township is situated issuing the same, and the words 'registered in the county clerk's office' shall be printed or written across the face of each bond, attested by the signature of the county clerk when so registered, and no bond shall be valid unless so registered."

The pleadings admit this registry, and certificate endorsed.

Does not this section imply that if the purchaser finds this certificate of registry endorsed upon the bond, he need look no further?

The registry says that the bond registered is "in accordance with the provisions of the act." Note that it is the absence of registry which invalidates the bond, not of the certificate. But if the township take this certificate and then issue the bond, is it not saying to the purchaser that it is in accordance with the provisions of the act, and calling the county clerk to witness that this is so?

For what purpose can this certificate be directed by the legislature except to apprise a purchaser that the bond so certified is in accordance with the provisions of the act?

Can a township be permitted, after procuring such a certificate to be endorsed upon a bond, and taking money on the faith of it, to turn around and call upon a holder to examine the records himself?

If the commissioners, when issuing bonds, tendered to purchasers loose certificates by the county clerk that they were in accordance with the provisions of the act, and took their money, could the township repudiate? How much stronger the estoppel if it be endorsed on the bond and signed by the clerk, in obedience to the direction of the statute?

No bond could be legally registered unless issued "in accordance with the provisions of this act." Hence, the delivery of a bond certified to be registered necessarily concluded the township.